



Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments

Volume No.: 8

Compliance and Enforcement

September 2009

Compliance and Enforcement

**U. S. Environmental Protection Agency
Office of Atmosphere Programs
Climate Change Division
Washington, D.C.**

FOREWORD

This document provides EPA's responses to public comments on EPA's Proposed Mandatory Greenhouse Gas Reporting Rule. EPA published a Notice of Proposed Rulemaking in the Federal Register on April 10, 2009 (74 FR 16448). EPA received comments on this proposed rule via mail, e-mail, facsimile, and at two public hearings held in Washington, DC and Sacramento, California in April 2009. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments letters and transcripts of the public hearings are also available electronically through <http://www.regulations.gov> by searching Docket ID *EPA-HQ-OAR-2008-0508*.

Due to the size and scope of this rulemaking, EPA prepared this document in multiple volumes, with each volume focusing on a different broad subject area of the rule. This volume of the document provides EPA's responses to significant public comments received on compliance and enforcement issues.

Each volume provides the verbatim text of comments extracted from the original letter or public hearing transcript. For each comment, the name and affiliation of the commenter, the document control number (DCN) assigned to the comment letter, and the number of the comment excerpt is provided. In some cases the same comment excerpt was submitted by two or more commenters either by submittal of a form letter prepared by an organization or by the commenter incorporating by reference the comments in another comment letter. Rather than repeat these comment excerpts for each commenter, EPA has listed the comment excerpt only once and provided a list of all the commenters who submitted the same form letter or otherwise incorporated the comments by reference in table(s) at the end of each volume (as appropriate).

EPA's responses to comments are generally provided immediately following each comment excerpt. However, in instances where several commenters raised similar or related issues, EPA has grouped these comments together and provided a single response after the first comment excerpt in the group and referenced this response in the other comment excerpts. In some cases, EPA provided responses to specific comments or groups of similar comments in the preamble to the final rulemaking. Rather than repeating those responses in this document, EPA has referenced the preamble.

While every effort was made to include significant comments related to compliance and enforcement issues in this volume, some comments inevitably overlap multiple subject areas. For comments that overlapped two or more subject areas, EPA assigned the comment to a single subject category based on an assessment of the principle subject of the comment. For this reason, EPA encourages the public to read the other volumes of this document with subject areas that may be relevant to compliance and enforcement issues.

The primary contact regarding questions or comments on this document is:

Carole Cook (202) 343-9263

U.S. Environmental Protection Agency
Office of Atmospheric Programs
Climate Change Division
Mail Code 6207-J
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

ghgreportingrule@epa.gov

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1. COMPLIANCE ASSISTANCE

Commenter Name: Susan Eckerly

Commenter Affiliation: National Federation of Independent Business (NFIB) and NFIB Small Business Legal Center

Document Control Number: EPA-HQ-OAR-2008-0508-0587.1

Comment Excerpt Number: 7

Comment: Small business owners have many priorities and often limited resources to devote to legal compliance. It can be nearly impossible for small firms to keep up with ever-changing laws and regulations. An NFIB Poll on regulations determined that 82 percent of small business owners typically discover new regulatory requirements in the normal course of business activity. Only 12 percent periodically search relevant materials to locate new requirements. While small business owners want to comply with applicable legal requirements, NFIB's research shows that small firms must be told about new laws and regulations that apply to them. To help ensure that small businesses understand and comply with any reporting requirements, NFIB hopes that EPA will recognize the unique challenges faced by small firms and provide compliance assistance that is written for and directed to small firms. EPA has promised compliance assistance, such as a hotline and outreach. This would be a good start, but EPA must provide better education and outreach to small businesses before the rule takes effect. For instance, EPA should develop a list – that is not buried in hundreds of pages of regulatory text - of the types of businesses that might be subject to reporting requirements under the rule. In addition, EPA should offer small businesses in all the regulated industries simplified emission calculation guidelines. To this end, it would be helpful if EPA could develop a calculator for determining emissions or work with businesses and trade groups in regulated industries to create a shorthand method to calculate emissions. Finally, EPA should create a “compliance guide” for small entities, which the agency drafts, solicits input from small entity stakeholders, and publishes at the same time as EPA's final rule.

Response: As reported in sections VIII.C and D of the proposal preamble (74 FR 16599 to 16602, April 10, 2009), and in the economic impacts section of the preamble to the final rule, EPA analyses determined that the rule will not have a significant economic impact on a substantial number of small entities. The rule has been developed in such a way as to minimize the impact on small entities.

To facilitate implementation and compliance, EPA plans to conduct an active and comprehensive outreach, training, and technical assistance program for the final rule. The primary audience would be the potentially affected industries, with an emphasis on assisting small entities in industrial, commercial, and institutional sectors that have only had limited experience with air pollution regulations under the Clean Air Act. Considering the input provided by public commenters, we have developed, or are in the process of developing, several different types of implementation and outreach materials to help facilities understand whether the rule applies to them, to explain how to calculate emissions, and to explain the reporting requirements and timetables. Compliance materials include information sheets, monitoring checklists, frequently asked question and answer documents, plain English guides to the rule, training sessions, and applicability determination tools. Some of these will be industry-specific. These materials are all being posted on the Web site for this rule, <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>. We will also provide an e-mail hotline for answering questions and providing technical assistance and a telephone hotline

for assistance in using the electronic reporting system. The EPA is developing screening tools that facilities in some individual industry sectors and facilities with general stationary fuel combustion sources can use to determine whether the rule applies to them. These screening tools will provide a short-cut to conservatively estimate a facility's GHG emissions to see if the facility is well below the reporting threshold. If a facility is not excluded by the screening tool, it could still calculate emissions using the more accurate monitoring and GHG calculation methods in the rule to determine if it is above or below the reporting threshold. These screening tools may also use parameters, such as nameplate capacity or some measure of activity, for some sectors as surrogates for actual GHG emissions where those parameters are reliable estimates of GHG emissions. However, the use of surrogate parameters to estimate GHG emissions as screening tools for applicability determinations will need to be determined on a sector-by-sector basis. For additional discussion of applicability determination, see the preamble summary of comments and responses on other general rule requirements, and the comment response document volume on subpart A, applicability.

Commenter Name: Bruce J. Parker

Commenter Affiliation: National Solid Wastes Management Association

Document Control Number: EPA-HQ-OAR-2008-0508-2126

Comment Excerpt Number: 6

Comment: We urge EPA to ensure that the reporting forms are self-explanatory, easy to fill out, and strictly limited to required information. Any non-required information should be clearly and separately identified. We are encouraged by EPA's discussion of its planned outreach and technical assistance program to aid reporting industries in submitting accurate data. As EPA has acknowledged in the proposal, the Agency will need to work with reporting facilities to ensure that they understand what data must be reported and how to fill out the reporting forms. We hope that EPA does not underestimate the pitfalls in preparing effective data forms and explaining how to fill them out.

Response: EPA is developing an electronic reporting system to facilitate reporting. A Web-based system will be provided to guide the reporters through the data entry, emission calculation, and submission process. See the preamble section on collection, management, and dissemination of GHG emissions data for more information on the electronic reporting system. See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, for information on compliance assistance materials and outreach activities.

Commenter Name: Richard A. Leopold

Commenter Affiliation: State of Iowa Department of Natural Resources

Document Control Number: EPA-HQ-OAR-2008-0508-0336.1

Comment Excerpt Number: 9

Comment: The Department tracks the quantity of annual waste accepted at each municipal solid waste (MSW) landfill in Iowa and tracks which landfills have collection systems, but the proposed rule does not provide enough guidance on how to estimate which facilities would have greenhouse gas emissions greater than or equal to the reporting threshold. EPA should provide screening tools, outreach, and education to landfills so they may determine their applicability to the proposed rule.

Response: Applicability for MSW landfills is determined by using the equations in the rule to calculate annual methane generation. Inputs include landfill information such as open and closure dates and annual waste acceptance rates (or waste in place on a given date if year-by-year historical waste acceptance rates are not known). EPA is developing an electronic applicability assessment screening tool to assist landfills in determining methane generation for applicability purposes. See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, for information on compliance assistance materials and outreach activities. See the preamble section and comment response document on subpart HH (MSW landfills) for responses to specific comments on the requirements of subpart HH.

Commenter Name: Marc J. Meteyer

Commenter Affiliation: Compressed Gas Association (CGA)

Document Control Number: EPA-HQ-OAR-2008-0508-0981.1

Comment Excerpt Number: 10

Comment: Each facility or supplier will have to retain and make available to EPA upon request many records related to the reporting of GHG emissions to EPA. While some of these records are relatively easy to identify and keep, additional guidance should be provided by EPA to help companies comply with these requirements. In particular, items where it appears companies could use specific guidance or sample records/plans include the following:

1. Documentation of the process used to collect the necessary data for the GHG emissions calculations?
2. A log book documenting any procedural changes to the GHG emissions accounting methods and any changes to the instrumentation critical to GHG emissions calculations;
3. Missing data computations; and
4. A written QAPP.

The CGA strongly supports the EPA's proposal that required records can be kept in an electronic or hardcopy format. In many cases, electronic recordkeeping is often a more efficient and effective way to maintain many records.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, for information on compliance assistance materials and outreach activities.

See the preamble section on general recordkeeping requirements and the comment response document volume on Subpart A: Recordkeeping for additional discussion of these changes and responses to general recordkeeping comments, which address the comments on documenting processes used to collect data, the log book, the monitoring plan (called a QAPP in the proposed rule), the records to be kept for missing data incidents, and electronic recordkeeping.

Commenter Name: John M. Batt

Commenter Affiliation: Airgas, Inc.

Document Control Number: EPA-HQ-OAR-2008-0508-0408.1

Comment Excerpt Number: 10

Comment: Each facility or supplier will have to retain and make available to EPA upon request many records related to the reporting of GHG emissions to EPA. While some of the records listed in this section are relatively easy to identify and keep, additional guidance should be provided by EPA to help companies comply with these requirements. In particular, items where it appears companies could use specific guidance or sample records/plans include the following:

1. Documentation of the process used to collect the necessary data for the GHG emissions calculations~;
2. A log book documenting any procedural changes to the GHG emissions accounting methods and any changes to the instrumentation critical to GHG emissions calculations;
3. Missing data computations; and
4. A written QAPP.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0981.1, excerpt 10.

Commenter Name: See Table 1

Commenter Affiliation:

Document Control Number: EPA-HQ-OAR-2008-0508-0509.1

Comment Excerpt Number: 16

Comment: EPA needs to set forth clearly for public comment what it is that sources will be required to report, and in what format. Among other things, EPA should develop source-category-specific reporting forms, with instructions, and include them in a supplemental proposed rule so that regulated entities will have a meaningful opportunity to comment on the regulatory burdens they would face under EPA's proposal.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, for information on compliance assistance materials and outreach activities. The EPA disagrees with the commenter on the need for a supplemental proposed rule. The proposed GHG reporting rule published on April 10, 2009, specified the reporting thresholds and described the types of regulated entities that are required to report for each separate source category. The proposed rule also specified the information that would be collected for calculating emissions, the procedures to be followed in calculating emissions, and the data elements that would be reported. Therefore, the potentially regulated entities have had the opportunity to comment on those requirements, and the EPA received substantive and constructive comments on the reporting requirements. EPA has made appropriate revisions to the final rule in response to those comments, and the final rule specifies all the data elements that must be reported. These data elements will be included in the electronic reporting system. See the preamble section collection, management, and dissemination of GHG emissions data for additional information and responses to comments about the electronic reporting system.

Commenter Name: Jeff A. Myrom
Commenter Affiliation: MidAmerican Energy Holdings Company
Document Control Number: EPA-HQ-OAR-2008-0508-0581.1
Comment Excerpt Number: 20

Comment: The use of simplified, yet highly conservative, emissions calculation tools to determine if a facility triggers the applicability thresholds is likely to result in false positives for reporting triggers because the simplified tools will inherently be biased high. Instead, facilities and suppliers are better served by following the actual reporting thresholds to determine if they trigger reporting requirements. Thus, such tools are not needed and are likely to create more work, not less work, for potential GHG emissions reporters.

Response: We received many comments requesting development of screening tools using simplified methods as an aid to determining applicability. The use of simplified, but conservative, calculation methods are only intended to be used as a short-cut by facilities that are probably well below the reporting threshold to easily determine whether they are subject. Facilities that use the simplified tool and appear to be subject to the rule will then use the more accurate (but generally more complicated) monitoring methods in the mandatory reporting rule to estimate emissions and determine whether they are covered by the rule. EPA has concluded that such screening tools can serve a useful purpose and will likely save many facilities that are not subject to the rule the effort associated with the more accurate methods. We note that even if a simplified tool or aid is provided by EPA, facilities are not obligated to use it. Facilities may, if they wish, use only the full GHG emission calculation and monitoring methods in the mandatory reporting rule to determine whether they exceed the applicability threshold. It is to the responsibility of each potential reporter to determine applicability and to submit GHG reports for their facility or supply operation if it meets the applicability criteria in 40 CFR 98.2.

Commenter Name: Susan J. Miller
Commenter Affiliation: The Brick Industry Association
Document Control Number: EPA-HQ-OAR-2008-0508-0478.1
Comment Excerpt Number: 4

Comment: The BIA requests that EPA: Develop specific guidance for industries that may fall partly in and partly out of the reporting group, including guidance that relates to the differences in voluntary versus mandatory reporting (e.g., as related to future ability to participate in a cap and trade program). The NAM suggestion to raise the reporting level from 25,000 metric tons to 100,000 metric tons, if implemented, would likely eliminate the potential for our industry to be included in this rule.

Response: EPA is developing extensive compliance assistance materials, training and outreach activities of this reporting rule, as described in the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. The focus of this outreach is on determining applicability and meeting the requirements of this reporting rule rather than other mandatory or voluntary programs that are not connected to this rule. See the preamble for the response on the selection of the threshold. In addition to the preamble response on the general applicability threshold, see also the preamble

sections and comment response document on individual source categories for responses to detailed comments on source category-specific threshold analyses.

Commenter Name: Edward N. Saccoccia

Commenter Affiliation: Praxair Inc.

Document Control Number: EPA-HQ-OAR-2008-0508-0977.1

Comment Excerpt Number: 20

Comment: Praxair encourages EPA to develop simplified emissions calculation tools for emission source categories to assist potential reporters in determining their applicability. While these simplified calculation tools would provide conservatively high emission estimates (which should be highlighted by EPA), they would allow many facilities to quickly determine when the rules are not applicable. For those facilities that find themselves slightly above the thresholds using these simplified calculation tools, further analysis for each source category would be appropriate to confirm applicability.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Michael Bradley

Commenter Affiliation: The Clean Energy Group (CEG)

Document Control Number: EPA-HQ-OAR-2008-0508-0479.1

Comment Excerpt Number: 8

Comment: The Clean Energy Group companies are currently assessing facility-level greenhouse gas emissions to determine applicability. While this is relatively straight-forward for major stationary combustion sources, it is more difficult for smaller stationary combustion and fugitive sources. To streamline this process and reduce administrative burdens, the Clean Energy Group requests that EPA develop supporting guidance and quantification tools containing simplified quantification methodologies to allow facilities to determine whether or not they meet the 25,000 metric ton threshold.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: John M. Batt

Commenter Affiliation: Airgas, Inc.

Document Control Number: EPA-HQ-OAR-2008-0508-0408.1

Comment Excerpt Number: 3

Comment: Airgas encourages EPA to develop simplified emissions calculation tools for emission source categories to assist potential reporters in determining their applicability. While these simplified calculation tools would provide conservatively high emission estimates, they would allow many facilities to quickly determine when the rules are not applicable. For those facilities that find themselves slightly above the thresholds using these simplified calculation tools, further analysis for each source category would be appropriate to confirm applicability.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Bill Herz
Commenter Affiliation: The Fertilizer Institute
Document Control Number: EPA-HQ-OAR-2008-0508-0212f
Comment Excerpt Number: 4

Comment: Within our membership, we have a number of small, medium, and large retail operations, and we are requesting that EPA provide blueprint and technical basis for computation of threshold quantities of greenhouse gases for these small businesses that may not have environmental compliance professionals or otherwise at their ready, and, thus, work as closely as possible with small businesses to help them understand whether this rule applies to them.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. In addition, as reported in sections VIII.C and D of the proposal preamble (74 FR 16599 to 16602, April 10, 2009), and in the economic impacts section of the preamble to the final rule, EPA analyses determined that the rule will not have a significant economic impact on a substantial number of small entities. The rule has been developed in such a way as to minimize the impact on small entities

Commenter Name: David A. Buff
Commenter Affiliation: Florida Sugar Industry (FSI)
Document Control Number: EPA-HQ-OAR-2008-0508-0500.1
Comment Excerpt Number: 4

Comment: Simplified calculation tools for determining applicability may be very useful and should be provided by EPA. These tools should be provided in an easy-to-use Excel spreadsheet format for reach source category and for the stationary fuel combustion category.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Edward N. Saccoccia
Commenter Affiliation: Praxair Inc.
Document Control Number: EPA-HQ-OAR-2008-0508-0977.1
Comment Excerpt Number: 29

Comment: Praxair would encourage the EPA to provide a comprehensive outreach program, including the elements listed by EPA in the Preamble, to help clarify and improve the understanding of the reporting program requirements.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Bill Grygar
Commenter Affiliation: Anadarko Petroleum Corporation
Document Control Number: EPA-HQ-OAR-2008-0508-0459.1
Comment Excerpt Number: 2

Comment: In addition to the 25,000 ton threshold, EPA should develop an applicability screening tool for those source categories whose applicability threshold is based on an aggregation of combustion emissions and industry segment specific emissions. An applicability screening tool should be based on high-level conservative methods, such as those found in 2009 API Compendium of Greenhouse Gas Emissions Methodologies for the Oil and Gas Industry, in conjunction with company engineering data and other site-specific information to avoid the burden of conducting a complete direct measurement analysis just to demonstrate non-applicability.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Laurie Burt

Commenter Affiliation: Massachusetts Department of Environmental Protection

Document Control Number: EPA-HQ-OAR-2008-0508-0453.1

Comment Excerpt Number: 28

Comment: Under Section VII of the Preamble, Compliance and Enforcement, EPA asks for comments on compliance training. Massachusetts suggests that EPA create on-line modularized training that demonstrates the reporting process using its reporting system.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, for the response on compliance training. The electronic reporting system will be Web-based and designed to walk the user through data entry and report submittal. EPA also intends to provide training on the electronic reporting system and will consider a combination of Webinars, live training, and on-line training modules.

Commenter Name: Helen A. Howes

Commenter Affiliation: Exelon Corporation

Document Control Number: EPA-HQ-OAR-2008-0508-0373.1

Comment Excerpt Number: 24

Comment: Exelon recommends that EPA conduct in-depth sector specific webinar trainings to ensure that the regulated community understands the requirements of the rule. These trainings would provide an opportunity for each sector to better understand the rule as it applies directly to them and to ask questions of EPA. This would also likely reduce the number of duplicative questions EPA would receive from reporters.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. EPA is planning to hold Webinars, as well as live training and on-line training modules, explaining the applicability of the rule and the reporting requirements to potential reporters, and we are considering the need to customize training to various sectors covered by the reporting rule.

Commenter Name: John M. Batt

Commenter Affiliation: Airgas, Inc.

Document Control Number: EPA-HQ-OAR-2008-0508-0408.1

Comment Excerpt Number: 15

Comment: EPA is encouraged to provide a comprehensive outreach program to help clarify and improve the understanding of the reporting program requirements. Compliance materials mentioned by EPA in the preamble such as compliance guides, brochures, fact sheets, frequent Q&As, sample reporting forms, and GHG emissions calculating tools should all be part of this outreach. As indicated earlier, simplified calculation methods to help facilities determine whether they are above reporting thresholds, and example facility records that must be kept would also be useful. During the first few years of this reporting program we believe that the establishment of a compliance assistance hotline and/or “compliance assistance internet center” is critical to improve reporter understanding and compliance while providing further support for a successful reporting program.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Thomas W. Easterly

Commenter Affiliation: Indiana Department of Environmental Management (IDEM)

Document Control Number: EPA-HQ-OAR-2008-0508-0525.1

Comment Excerpt Number: 14

Comment: EPA should provide detailed emissions calculation worksheets (or other estimation models) for facilities to use to calculate actual annual GHG emissions.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7 and the response to comment EPA-HQ-OAR-2008-0508-2126, excerpt 6.

Commenter Name: Thomas W. Easterly

Commenter Affiliation: Indiana Department of Environmental Management (IDEM)

Document Control Number: EPA-HQ-OAR-2008-0508-0525.1

Comment Excerpt Number: 12

Comment: To ease the emissions estimation and reporting burden on potentially affected facilities, U.S. EPA should supply basic, easy to use emission estimation screening tools to assist facilities in determining applicability. The worksheets or emission models, should include areas for entering all data that must be reported, equations and GHG emission calculations, and then export all data required to be reported into a defined U.S. EPA format. It is essential that U.S. EPA provide the necessary tools to streamline the reporting process and minimize burden to all affected entities.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Kelly R. Carmichael

Commenter Affiliation: NiSource

Document Control Number: EPA-HQ-OAR-2008-0508-1080.2

Comment Excerpt Number: 5

Comment: NiSource is currently assessing facility level GHG emissions to determine applicability. While this is relatively straight forward for stationary combustion sources, it is much more difficult for fugitive and vented sources of GHG emissions. To streamline this

process and reduce administrative burdens, NiSource encourages EPA to develop supporting guidance and tools containing simplified quantification methodologies to allow facilities to determine whether or not they meet the 25,000 metric ton threshold.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Marc J. Meteyer

Commenter Affiliation: Compressed Gas Association (CGA)

Document Control Number: EPA-HQ-OAR-2008-0508-0981.1

Comment Excerpt Number: 14

Comment: The CGA encourages the EPA to provide a comprehensive outreach program to help clarify and improve the understanding of the reporting program requirements. Compliance materials mentioned by EPA in the preamble such as compliance guides, brochures, fact sheets, frequent Q&As, sample reporting forms, and GHG emissions calculating tools should all be part of this outreach. As indicated earlier, simplified calculation methods to help facilities determine whether they are above reporting thresholds, and example facility records that must be kept would also be useful. During the first few years of this reporting program, CGA believes that the establishment of a compliance assistance hotline and/or “compliance assistance internet center” is critical to improve reporter understanding and compliance while providing further support for a successful reporting program.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: William C. Herz

Commenter Affiliation: The Fertilizer Institute (TFI)

Document Control Number: EPA-HQ-OAR-2008-0508-0952.1

Comment Excerpt Number: 57

Comment: EPA should include provisions for compliance assistance for recalculated data submitted to EPA that constitutes an improved or agreed to data estimation methodology. 74 Fed. Reg. at 16,474.

Response: GHG emissions must be calculated using the procedures specified in the final rule. EPA has considered specific comments received on the GHG calculation procedures for individual source categories and EPA has updated the relevant source category subparts in cases where we determined the calculation procedures should be revised. (See the preamble and comment response documents for the relevant source category subparts.) The final rule includes provisions for resubmitting annual GHG reports if errors are discovered as explained in the preamble section on making corrections to annual reports; however, reports cannot be revised to use GHG calculation methodologies that are not in the rule. See the preamble section and comment response document volume on the general monitoring approach for responses to comments on why EPA is not allowing use of methods other than those in the rule. For the response on compliance assistance, see the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Michael Carlson
Commenter Affiliation: MEC Environmental Consulting
Document Control Number: EPA-HQ-OAR-2008-0508-0615
Comment Excerpt Number: 36

Comment: Because of the far-reaching applicability of the proposed rule as well as its breadth and complexity, we urge the agency to establish and maintain at least a compliance assistance hotline.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: See Table 3
Commenter Affiliation:
Document Control Number: EPA-HQ-OAR-2008-0508-0679.1
Comment Excerpt Number: 26

Comment: EPA proposes reporting thresholds that are generally equivalent to a threshold of 25,000 metric tons of CO₂e per year of actual emissions. EPA defines broad categories for rule applicability: some sectors are all in (i.e., petroleum refineries); some only if they exceed the threshold (i.e., oil and natural gas systems, hydrogen production); some only major stationary combustion sources, and some that are not reporting at all. EPA recognizes that a potentially large number of facilities would need to calculate GHG emissions in order to determine whether or not they have to report. For facilities that contain only large combustion sources, EPA proposes to add a capacity threshold in addition to the actual emissions threshold. EPA defines such a capacity threshold as any facility with an aggregate maximum rated heat input capacity of less than 30 MMBtu/hr. EPA seeks comments about: "... the need for developing simplified emissions calculation tools for certain source categories to assist potential reporters in determining applicability. These simplified calculation tools would provide conservatively high emission estimates as an aid in identifying facilities that could be subject to the rule. Actual facility applicability would be determined using the methods presented for each source category in the rule". (74 FR 68, page 16470) API comments EPA should develop an applicability-screening tool for facilities, particularly for those source categories whose applicability threshold is based on an aggregation of combustion emissions (subpart C) and industry segment specific emissions (such as in subparts J, P, and in particular W). API is concerned about the burden that will be imposed on some sectors, such as oil and natural gas systems, or other industry sectors where the applicability determination hinges on total emissions from combustion and non-combustion sources. Companies in these sectors will have to undertake extensive data collection and measurements just to demonstrate non-applicability of their facilities under this rule. API supports the development of sector appropriate screening tools to facilitate this applicability determination and reduce burden when determining facility applicability. For example, in the API Compendium a range of conservative screening methods are provided for oil and natural gas systems, including compressor stations. These methods are geared for high-level emission estimates on a facility type basis and could be the basis for such a simplified approach. API proposes to work collaboratively with EPA to develop screening tools that are applicable for the oil and natural gas sector. Such tools will use simplified methods to determine applicability and will be developed in consultation with API members, and in collaboration with EPA technical staff. If a facility applies the screening tool according to EPA instructions and reaches the conclusion that they are not subject to reporting under the rule, the facility shall not be subject to

enforcement should later-developed information indicate that the facility would have been above the applicable threshold.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, and the preamble response on determining applicability in the preamble section entitled "summary of comments and responses on other general rule requirements". While EPA is developing applicability tools and informational materials, the rule presents the requirements that legally apply to reporters. It is to the responsibility of each potential reporter to determine applicability and to submit GHG reports for their facility or supply operation if it meets the applicability criteria in 40 CFR 98.2. The site-specific company information the reporter inputs into a tool is crucial to the outcome provided by the tool. EPA will not automatically exempt facilities that use a screening tool from enforcement action if they, in fact, were above the applicable threshold and should have been reporting GHG emissions. See the preamble section on compliance and enforcement for responses on enforcement flexibility. Regarding the commenter's mention of oil and natural gas systems, EPA is not going final with subpart W (oil and natural gas systems) at this time. As we consider next steps, we will be reviewing public comments and other relevant information. Thus, we are not responding to comments on that subpart at this time.

Commenter Name: Gregory A. Wilkins

Commenter Affiliation: Marathon Oil Corporation

Document Control Number: EPA-HQ-OAR-2008-0508-0712.1

Comment Excerpt Number: 100

Comment: Marathon supports EPA's commitment to providing technical guidance in a timely fashion upon publication of the final rule (with enough time for facilities to comply with the start of the rule). Marathon requests that fact sheets, compliance guides, and FAQs documents be created and circulated upon publication of a final rule and prior to the start of data collection. Depending on the clarity and changes made from the proposed rule to the final, there may be many gray areas that industry would like to receive further input on especially for the monitoring requirements, methodologies, and emission factors to name a few. It is important that these documents be released prior to the data collection start date so that regulated entities have time to be sure they are in compliance.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. EPA is prioritizing the information and training materials. Several compliance assistance tools will be available upon signature of the rule, prior to publication in the Federal Register. Other materials will be available as soon after publication as feasible.

Commenter Name: Keith Overcash

Commenter Affiliation: North Carolina Division of Air Quality (NCDAQ)

Document Control Number: EPA-HQ-OAR-2008-0508-0588

Comment Excerpt Number: 16

Comment: Given our experiences conducting workshops on GHG emissions reporting to facilities in our state, we recognize the need for tools to assist potential reporters in determining applicability. These tools should utilize basic readily available information and be user friendly. For combustion, for example, the tool can use type and quantity of fuels used. A screening

approach for landfills that use volume of waste processed, and for waste water treatment operations that use volume of wastewater would also be very useful.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. At this time EPA is not going final with the industrial landfill and wastewater treatment subparts. Subpart HH will address only municipal solid waste landfills. As we consider next steps, we will be reviewing the public comments and other relevant information. Thus, we are not responding to comments on the industrial landfill and wastewater treatment subparts at this time.

Commenter Name: Jeff A. Myrom
Commenter Affiliation: MidAmerican Energy Holdings Company
Document Control Number: EPA-HQ-OAR-2008-0508-0581.1
Comment Excerpt Number: 60

Comment: MidAmerican submits that frequently asked questions and answers, and examples of correct reporting submissions would likely be the most useful means for delivering assistance to various sectors.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: [name not given]
Commenter Affiliation: Graphic Arts Coalition (GAC)
Document Control Number: EPA-HQ-OAR-2008-0508-0701.1
Comment Excerpt Number: 9

Comment: To assure that an effective registry is established that does not impose additional costs on the struggling manufacturing sector, the GAC recommends that the Agency develop and offer financial assistance for the purchase of tools designed to assist industry in measuring and tracking GHG emissions.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, for a discussion of informational materials and training EPA is providing to help reporters comply with the rule. EPA will also provide a Web-based electronic reporting system to guide reporters through the data entry, emission calculation, and submission process. The EPA has no plans to develop and offer financial assistance for the purchase of tools designed to assist industry in measuring and tracking GHG emissions. For most industry sectors, the purchase of equipment, such as flow meters and continuous emission monitors, is not needed to measure and track GHG emissions. The 25,000 metric ton CO₂e reporting threshold will exclude smaller facilities and sources. In response to comments received on the proposal, we have revised the GHG calculation methodologies in subpart C (general stationary combustion) and some other subparts to allow facilities to use simpler methods for more small sources. See the preamble and the comment response documents for the relevant source category subparts for more information). As reported in sections VIII.C and D of the proposal preamble (74 FR 16599 to 16602, April 10, 2009), and in the economic impacts section of the preamble to the final rule, EPA analyses determined that the rule will not have a significant economic impact on a substantial number of small entities. The rule has been developed in such a way as to minimize the impact on small entities.

Commenter Name: Bryan L. Brendle
Commenter Affiliation: National Association of Manufacturers (NAM)
Document Control Number: EPA-HQ-OAR-2008-0508-0572.1
Comment Excerpt Number: 9

Comment: To assure that an effective registry is established that does not impose additional costs on the struggling manufacturing sector, the NAM recommends that EPA assist industry in measuring and tracking GHG emissions. As a benchmark figure, pursuant to the NAM's 2008 White Paper on Climate Change, the NAM recommends that each participating entity receive \$10,000 – \$50,000 for purchasing the necessary software and technical support to develop the inventory.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, regarding compliance assistance and outreach. See the response to comment EPA-HQ-OAR-2008-0508-0701.1, excerpt 9, with respect to the request for financial assistance for compliance.

Commenter Name: James M. Bushee
Commenter Affiliation: PGC Electricity Committee
Document Control Number: EPA-HQ-OAR-2008-0508-0683.1
Comment Excerpt Number: 7

Comment: EPA might reduce the incidence of errors by supplementing the complex reporting requirements with explanations in the vernacular of the affected industries. For example, the Agency should set de minimis levels for exemption that are expressed in units other than metric tons of carbon dioxide equivalent ("CO₂e "). The proposal currently exempts sources in many reporting categories (including EGUs and unspecified stationary fuel combustion sources) if their emissions fall below 25,000 metric tons of CO₂e. While we support the establishment of an appropriate threshold, EPA can provide additional clarity by expressing the threshold in industry-familiar terms (e.g., a megawatt-based exemption level for EGUs). This would especially benefit smaller sources in each category, which are most likely to qualify but may be unfamiliar with the concept or calculation methods for carbon dioxide equivalents.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Karyn Andersen
Commenter Affiliation: RR Donnelley
Document Control Number: EPA-HQ-OAR-2008-0508-0345.1
Comment Excerpt Number: 4

Comment: Does EPA intend to provide assistance or an outreach program to ensure that facilities are aware of their reporting obligation? Will there be a worksheet communicated that can be used to calculate emissions and determine site applicability (including EPA conversion factors)?

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Shawne C. McGibbon
Commenter Affiliation: Small Business Administration (SBA)
Document Control Number: EPA-HQ-OAR-2008-0508-0979.1
Comment Excerpt Number: 5

Comment: As a further method to reduce the potential impact of the GHG reporting rule on small entities, EPA should prepare a small entity compliance guide to GHG emissions reporting. The guide could be very helpful in explaining the rule's applicability, particularly for combustion sources that are uncertain if they are subject to the rule. If small entities can gain an understanding of whether they are even "in the ballpark" for having to report, a guide would save much time and effort for small facilities. Similarly, by explaining alternative calculation methods that are available, a guide would make the process less burdensome for GHG reporters. The guide should also help familiarize small entity reporters with the forms they must use, recordkeeping requirements, and the verification procedures they are expected to follow. To be most beneficial, the guide should be published simultaneously with the final rule.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. See the response to comment EPA-HQ-OAR-2008-0508-0981.1, excerpt 10, for information on general recordkeeping requirements.

Commenter Name: James M. Bushee
Commenter Affiliation: PGC Electricity Committee
Document Control Number: EPA-HQ-OAR-2008-0508-0683.1
Comment Excerpt Number: 5

Comment: EPA can address these burdens by establishing a robust compliance assistance and outreach effort to accompany the reporting program. Timely provision of accurate guidance will help companies avoid missteps as they create and implement data collection and retention protocols to comply with the program. EPA should also consider options to diffuse compliance costs, such as switching to a biennial rather than annual reporting requirement.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, regarding compliance assistance and outreach. See the preamble for the response on reporting frequency and provisions to cease reporting.

Commenter Name: Juanita M. Bursley
Commenter Affiliation: GrafTech International Holdings Inc. Company (GrafTech)
Document Control Number: EPA-HQ-OAR-2008-0508-0686.1
Comment Excerpt Number: 2

Comment: Given the global nature of GHG emissions, GrafTech understands EPA's need for more standardized emissions estimation methodologies, but believes EPA can accomplish the stated goals of this reporting rule without making it so complex, so prescriptive and, in our Company's opinion, so extremely difficult to comply with. GrafTech means no disrespect to the agency, which has obviously put in an extreme amount of effort to draft the proposed rule, but asks EPA to seriously work toward simplifying the requirements and provide the regulated

community with more flexibility to comply more efficiently, without significantly compromising the quality of submitted data.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, regarding compliance assistance and outreach. Where the reporting requirements can be simplified in response to public comments on a specific source category, EPA has done so in the final rule. See the preamble sections and comment response documents on the individual source category subparts for discussion of specific changes to the GHG calculation methodologies.

Commenter Name: Doug MacTaggart

Commenter Affiliation: C-Lock Technology, Inc.

Document Control Number: EPA-HQ-OAR-2008-0508-0502.1

Comment Excerpt Number: 1

Comment: Under VII.A, EPA discusses plans for an active outreach and technical assistance program to go along with the final rule, including GHG emission calculation tools and a web-based compliance assistance center. In order to minimize uncertainty about who is required to report and to provide the level of assistance necessary to ensure accurate reporting, the outreach and technical assistance program will need to be very extensive. In fact, given that facilities and entities that will be required to report on or before March 31, 2011, will need to collect emissions data and relevant documentation starting January 1, 2010, the best course for EPA may be to make a determination of reporting requirement for facilities and entities that would potentially fall in the gray area surrounding the threshold established for each sector well in advance of January 1, 2010, and inform the identified facilities and entities on what data and documentation they will need to collect. Depending on the approach EPA would use to make these determinations, it will be likely that the actual GHG emissions for some of the identified facilities and entities will be less than the established threshold for a given sector, and possibly some that are not identified will have emissions that exceed a sector's threshold. However, for the entirety of the program, sufficient data will be collected to serve EPA's purpose of accurate information gathering, and the majority of significant emitters in each sector will become experienced with the reporting process in a way that provides positive feedback. An additional aspect for the outreach and technical assistance program for the GHG reporting rule which could significantly broaden the reach of EPA to the large number of affected facilities and entities would be enlistment in the program of third-party organizations including state-level environmental organizations, non-governmental organizations (NGOs), and private companies. EPA would need to provide oversight and/or regulation of these organizations in order to ensure technical competence and honest operation.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, regarding EPA's plans for compliance assistance and outreach activities. EPA is developing applicability tools, informational materials, and training, however the rule itself contains the requirements that legally apply to reporters. It is up to each potential reporter to determine applicability and to submit GHG reports for their facility or supply operation if it meets the applicability criteria in 40 CFR 98.2. EPA will not be making applicability determinations for each individual facility that may be subject to the reporting requirements prior to the first reporting date, and will not be involving other third parties (including environmental organizations, NGOs, or private companies) in making such applicability determinations. See the preamble response on determining applicability in the preamble section entitled "summary of comments and responses

on other general rule requirements". Also see the preamble for responses on the role of states and other responses on compliance and enforcement.

Commenter Name: Niki Wuestenberg
Commenter Affiliation: Republic Services, Inc.
Document Control Number: EPA-HQ-OAR-2008-0508-0557.1
Comment Excerpt Number: 17

Comment: As with most environmental programs, EPA will enforce the proposed requirements with the threat of penalties, but EPA's proposal seeks to minimize the need for enforcement through implementation of an active outreach and technical assistance program. Republic appreciates EPA's promised efforts in this regard, and agrees that compliance materials tailored to the needs of individual industries will be an important way of ensuring a cooperative and productive way of implementing EPA's proposal. Given the nature of landfills generally, and the many unique provisions in the proposed rule for landfills, Republic encourages EPA to focus specifically on landfills in its outreach efforts. Such efforts should include preparation of guidance documents in plain language to assist landfill owners and operators in understanding and complying with the new reporting requirements. Inevitably, however, mistakes will be made, especially in the first few years of the program. Republic encourages EPA to recognize the complexity of its proposal, and the difficulty many sources may have in complying with its requirements, by following a good faith or willfulness conduct standard in pursuing any enforcement actions for at least the first three years of the program.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, regarding compliance assistance and outreach. See the preamble section on compliance and enforcement for a response regarding enforcement flexibility. See the preamble section and comment response document on subpart HH (MSW landfills) for responses to specific comments on the requirements of subpart HH.

Commenter Name: Michael Carlson
Commenter Affiliation: MEC Environmental Consulting
Document Control Number: EPA-HQ-OAR-2008-0508-0615
Comment Excerpt Number: 28

Comment: The development of tools and/or reporting aids (16559) would be beneficial not just for the Landfills Source Category (Subpart HH) but for all other subparts as well.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. See also the response to comment EPA-HQ-OAR-2008-0508-0588, excerpt 16.

Commenter Name: Christina Gruenhagen
Commenter Affiliation: Iowa Farm Bureau Federation (IFBF)
Document Control Number: EPA-HQ-OAR-2008-0508-0470.1
Comment Excerpt Number: 3

Comment: The proposal asks for comment on the advantages or disadvantages of using screening tools such as look up tables or computerized calculator to help farmers determine whether they meet the reporting threshold. Farmers are responsible for determining whether the facility meets the reporting threshold under the rule. Most if not all of the manure management facilities that will be covered under this rule are likely to be subject to Clean Air Act reporting requirements for the first time. We believe that farmers would benefit from screening guides to assist with compliance; however, the screening tools should be based on sound and transparent science and peer reviewed for accuracy. Such guides should be one tool available to facilities to determine whether it meets the reporting threshold if it chooses to use it. Screening tools should be included for the dominant types of manure management systems used by each species. Facilities should also be able to use other tools for measuring emissions to determine applicability of the reporting requirements as well. Facilities are not all alike, but the complications and regulatory burden of the rule should provide farmers with options for compliance.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Ryan K. Miltner

Commenter Affiliation: Miltner Law Firm, LLC

Document Control Number: EPA-HQ-OAR-2008-0508-0508.1

Comment Excerpt Number: 8

Comment: EPA should provide reporting forms and guidance to supplement the equations and formulas proposed in regulations: Even to the experienced farm operator, the formulas and methodology set forth in the Proposed Rule for calculation of the emissions from a manure management facility are complex and difficult. To ensure that those facilities that may be required to report compile accurate data, and to minimize the economic and regulatory burden on these farms, clear reporting software and forms should be developed and provided by EPA to facilitate reporting. As noted above, the vast majority of operators will engage consultants to assist in reporting, at significant cost to the farmer. To minimize the monetary and temporal costs on the dairy producer, EPA must take all reasonable steps to reduce the burden of reporting on affected entities.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Michael L. H. Marsh

Commenter Affiliation: Western United Dairymen

Document Control Number: EPA-HQ-OAR-2008-0508-0702.1

Comment Excerpt Number: 2

Comment: EPA has requested comment on the advantages and disadvantages of additional screening tools such as look-up tables or computerized calculators to help determine if they meet the reporting threshold. Such assistance is absolutely necessary if this reporting requirement is implemented for livestock operations. Both approaches are indicated, allowing the producer a choice of method. We suggest that if the rule is adopted, the appropriate place for the agricultural tables and calculators to be developed is at the United States Department of Agriculture (USDA) with the assistance of the American Association of Agricultural and Biological Engineers

(ASABE). EPA should be prepared to fully fund such an undertaking if it is to require reporting in the detail described in the Preamble to the rule.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7. Since the authority for the development of this rule is with EPA, EPA will be responsible for the development of the tables and calculators for manure management, with appropriate input from experts from other agencies and outside organizations in that subject.

Commenter Name: Craig Head

Commenter Affiliation: Nebraska Farm Bureau Federation (NFBF)

Document Control Number: EPA-HQ-OAR-2008-0508-0578.1

Comment Excerpt Number: 7

Comment: If EPA chooses to continue to include GHG emission of livestock manure management systems we would encourage EPA to consider development of “screening” guides to help producers determine applicability of reporting requirements. Such guides should be one tool to aid producers to determine the need to report, if they choose to use it. Facilities should be able to use other tools for measuring emissions to determine applicability of reporting requirements.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

Commenter Name: Mark Maslyn

Commenter Affiliation: American Farm Bureau Federation (AFBF)

Document Control Number: EPA-HQ-OAR-2008-0508-0693.1

Comment Excerpt Number: 7

Comment: The proposal asks for comment on the advantages or disadvantages of using screening tools such as look up tables or computerized calculator to help owners and facility operators determine whether they meet the reporting threshold. Facility operators are responsible for determining whether the facility meets the reporting threshold under the rule. Most if not all of the manure management facilities that will be covered under this rule are likely to be subject to Clean Air Act reporting requirements for the first time. Emissions calculations for manure management systems are varied and complicated. We believe that manure management facilities would benefit from such a guide. Before such a screening guide is published, facility size numbers should be determined on sound and transparent science and peer reviewed for accuracy. Such tools have been helpful in other situations, such as the 1605(b) Simplified Emissions Inventory Tool or the COMET-VR carbon measurement tool. Such guides should be one tool available to facilities to determine whether it meets the reporting threshold if it chooses to use it. Facilities should also be able to use other tools for measuring emissions to determine applicability of the reporting requirements as well. Facilities are not all alike. We appreciate the opportunity to provide comments on this proposed rule.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7.

2. ROLE OF STATES

Commenter Name: Sonny Perdue

Commenter Affiliation: Governor, State of Georgia (GA)

Document Control Number: EPA-HQ-OAR-2008-0508-0757.1

Comment Excerpt Number: 2

Comment: A program of this scope, affecting all stationary sources emitting more than 25,000 tons of GHGs per year, will inevitably require activities by the state and local permitting authorities in order to be successful. If EPA provides (at a minimum) for delegation to states to collect GHG data, those delegated states will be required to perform a host of new activities. Moreover, non-delegated states as well will be expected by the facilities in their jurisdictions to provide assistance in quantifying GHG emissions and in communicating reporting procedures. Whatever decisions are ultimately made, we recommend that the final rule articulate clearly what is expected of states regarding the nationwide GHG reporting rule, and that funding be provided for all necessary activities.

Response: See the preamble for the response on the role of states in compliance and enforcement. State and local agencies have no obligations under this rule to assist EPA with rule implementation or enforcement, but we are interested in exploring ways to coordinate our complementary activities and recognize that states would likely require resources if they were to take on new responsibilities in these areas under this rule. States will be financially impacted by the rule only to the extent that States own GHG emission sources that are required to submit annual GHG reports, such as general stationary combustion sources or municipal solid waste landfills with emissions above the applicable thresholds.

Commenter Name: Richard A. Leopold

Commenter Affiliation: State of Iowa Department of Natural Resources

Document Control Number: EPA-HQ-OAR-2008-0508-0336.1

Comment Excerpt Number: 3

Comment: In the Preamble, EPA states "In concert with their routine inspection and other compliance and enforcement activities for other CAA programs, State and local agencies also can assist with educating facilities and assuring compliance at facilities subject to this rule." Will EPA be providing funding to State and Local agencies to assist with education and compliance? More details on these efforts should be included in the final rule.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.

Commenter Name: Keith Overcash

Commenter Affiliation: North Carolina Division of Air Quality (NCDAQ)

Document Control Number: EPA-HQ-OAR-2008-0508-0588

Comment Excerpt Number: 32

Comment: States are well situated to provide compliance assistance as we do for various other Federal regulatory programs. States are familiar with the sources, their requirements and carry out regular inspections. Our existing operating infrastructure allows compliance inspectors to

efficiently inspect facilities throughout the state. We think our involvement in the rule in areas such as potential data collectors, compliance assistance and assistance with data verification will result in a much more successful rule. It will also be more cost-effective for EPA to implement the rule with state involvement than instituting a new EPA managed program for 13,000+ facilities. Nonetheless, NC DAQ is concerned about the incremental costs to our program if these activities are delegated to the states, and therefore suggests that appropriate funding be provided to state programs.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.

Commenter Name: James P. Brooks

Commenter Affiliation: Maine Department of Environmental Protection

Document Control Number: EPA-HQ-OAR-2008-0508-0404.1

Comment Excerpt Number: 6

Comment: Regardless of the final form of the mandatory greenhouse gas reporting rule, the addition of greenhouse gases to the federal regulatory scheme will result in additional demands for state resources. Existing state regulatory programs will require amendments to ensure consistency with federal programs, potentially resulting in changes to electronic reporting systems, licensing procedures, monitoring programs, and other programmatic elements. EPA must ensure that they take into consideration these impacts and provide sufficient funding to enable states to support the worthwhile effort of reducing greenhouse gas emissions.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.

Commenter Name: G. Vinson Hellwig

Commenter Affiliation: Michigan Department of Environmental Quality (MDEQ)

Document Control Number: EPA-HQ-OAR-2008-0508-1035.1

Comment Excerpt Number: 4

Comment: The GHG reporting rule proposes to have those affected facilities directly report their emissions to the EPA. On the face of it, it would appear there would be no resources or effort expended on the part of the state and local authorities. However, as the affected facilities implement the new reporting requirements, state and local agency contacts will be the regulated community's first point of contact for assistance. There is no doubt there will be resource ramifications for state and local agencies. We strongly suggest that the proposed rule recognize the inevitable state and local agency involvement and appropriate funding be allocated.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.

Commenter Name: Matthew Frank

Commenter Affiliation: Wisconsin Department of Natural Resources

Document Control Number: EPA-HQ-OAR-2008-0508-1062.1

Comment Excerpt Number: 4

Comment: EPA should provide adequate financial resources to those states that accept delegation so critical administrative, verification and compliance duties can be properly performed.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.

Commenter Name: Thomas W. Easterly

Commenter Affiliation: Indiana Department of Environmental Management (IDEM)

Document Control Number: EPA-HQ-OAR-2008-0508-0525.1

Comment Excerpt Number: 13

Comment: Indiana has concerns regarding the monitoring and quality assurance requirements and compliance activities associated with the proposed reporting rule. The proposed rule will generate a large amount of information ranging from stack testing data, record keeping, quality assurance records, review records, etc. While the proposed rule specifies that all the results of these tests will be submitted to the Administrator, it is unclear who will be responsible for assuring compliance with testing protocols. If the U.S. EPA is expecting states to take on the additional work to review and process the compliance information, Indiana would have insufficient resources to accomplish this.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.

Commenter Name: James B. Martin

Commenter Affiliation: Colorado Department of Public Health and Environment

Document Control Number: EPA-HQ-OAR-2008-0508-0554.1

Comment Excerpt Number: 7

Comment: EPA should evaluate and consider what burdens this reporting rule, or collateral activities that will arise from this rule, will impose on state and local air quality agencies, what types of resources states will need and where those resources will come from. EPA should consider expanding resource capacity to allow for training, forums, seminars, etc. that will enable information transfer on how the reporting rule will be implemented. Additionally, wherever possible, look-up/quick reference tables to assist with the implementation of this rule would be useful tools for both emission reporters and reviewers (e.g., states, researchers, etc.).

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule, as well as the response to comment EPA-HQ-2008-0508-0587.1, excerpt 7, on outreach and compliance assistance.

Commenter Name: David Thornton

Commenter Affiliation: National Association of Clean Air Agencies (NACAA)

Document Control Number: EPA-HQ-OAR-2008-0508-0563

Comment Excerpt Number: 7

Comment: A program of this scope, affecting all stationary sources emitting more than 25,000 tons of GHGs per year, will inevitably require activities by the state and local permitting authorities in order to be successful. If, as we hope, EPA provides (at a minimum) for delegation to states to collect GHG data, those delegated states will be required to perform a host of new activities. Moreover, non-delegated states as well will be expected by the facilities in their jurisdictions to provide assistance in quantifying GHG emissions and in communicating reporting procedures. Additionally, if EPA chooses to consolidate the reporting functions by utilizing the EIS, harmonizing the time frames and reporting levels to the greatest extent possible, a still greater level of activity by air agencies will be required. Whatever decisions are ultimately made, NACAA recommends that the final rule articulate clearly what is expected of states and localities regarding the nationwide GHG reporting rule, and that new, not reprogrammed, funding be provided for all necessary activities. In addition, EPA should provide outreach and training on the GHG reporting rule to the association's members.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, regarding funding for State support of the GHG reporting rule, as well as the response to comment EPA-HQ-2008-0508-0587.1, excerpt 7, on outreach and compliance assistance.

Commenter Name: Myra C. Reece

Commenter Affiliation: South Carolina Department of Health and Environmental Control (SC DHEC)

Document Control Number: EPA-HQ-OAR-2008-0508-0654.1

Comment Excerpt Number: 7

Comment: A program of this scope, affecting all stationary sources emitting more than 25,000 tons of GHGs per year, will inevitably require activities by the state permitting authorities in order to be successful. If, as we hope, EPA provides (at a minimum) for delegation to states to collect GHG data, those delegated states will be required to perform a host of new activities and services to both the regulated community and the public. Additionally, if EPA chooses to consolidate the reporting functions by utilizing the EIS, harmonizing the time frames and reporting levels to the greatest extent possible, to the benefit of states, localities and sources alike, a still greater level of activity by air agencies will be required. Whatever decisions are ultimately made, the final rule must articulate clearly what is expected of states regarding the nationwide GHG reporting rule, and that funding be provided for all necessary activities. In addition, EPA should provide outreach and training on the GHG reporting rule to the state and local air programs. It is also imperative that EPA not take scarce Section 105 funding from the state and local programs to support federal activities related to this program as was done for the NOx SIP Call and Clean Air Interstate Rule trading programs.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule, as well as the response to comment EPA-HQ-2008-0508-0587.1, excerpt 7, on outreach and compliance assistance.

Commenter Name: Alice Edwards

Commenter Affiliation: Alaska Department of Environmental Conservation (ADEC)

Document Control Number: EPA-HQ-OAR-2008-0508-0720.1

Comment Excerpt Number: 8

Comment: Given the scope of this proposed program and the number of entities that will be required to report, it appears likely that there will be some impacts on state air quality programs. For example, it is likely that ADEC and other state agencies will need to provide assistance in quantifying GHG emissions and in communicating reporting procedures to the regulated community. Once EPA has made its final decisions on the program, it should clearly articulate in the final rule what will be expected of states. EPA should provide funding for those activities as well as outreach and training on the final GHG reporting rule requirements.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule, as well as the response to comment EPA-HQ-2008-0508-0587.1, excerpt 7, on outreach and compliance assistance.

Commenter Name: Mark R. Vickery

Commenter Affiliation: Texas Commission on Environmental Quality (TCEQ)

Document Control Number: EPA-HQ-OAR-2008-0508-0666.2

Comment Excerpt Number: 4

Comment: In referring to States that currently implement similar GHG reporting and reduction programs, EPA states: “....State and local agencies will serve an important role in communicating the requirements of the rule and providing compliance assistance. In concert with their routine inspection and other compliance and enforcement activities for other CAA programs, State and local agencies also can assist with educating facilities and assuring compliance at facilities subject to this rule.” In order to provide this assistance, states will be required to rely on limited resources already dedicated to administering current CAA programs. The Executive Director of the TCEQ believes that this registry should remain a national program and as such, the EPA should not rely upon the states to provide outreach and compliance assistance. In the event that EPA continues to pursue this notion, adequate funding must be provided to states to carry out this role. In addition, without delegation it is unclear how states will be effective in assuring compliance for facilities subject to a purely federal requirement. In addition, the Executive Director of the TCEQ requests that EPA describe how compliance will be determined and what enforcement options would be available for noncompliant sources.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule..

Commenter Name: Roy Prescott and John Duffy

Commenter Affiliation: Local Government Advisory Committee (LGAC) and Climate Change

Document Control Number: EPA-HQ-OAR-2008-0508-2079

Comment Excerpt Number: 9

Comment: Role of the States (16595) — The proposed rule states that "State and local agencies will serve an important role in communicating the requirements of the rule and providing compliance assistance". Currently, local air quality programs are strictly focused on monitoring and inspections related to compliance with national ambient air quality standards (NAAQS), not

GHG emissions or related concerns. The associated inspection programs are based on permits or emissions of the level and type the program is currently authorized to investigate. These local programs receive direction regarding program goals and implementation from the State and are specifically not provided funding for education and outreach. Adding an educational component onto these inspection programs for a separate and distinct GHG program is not feasible from both a financial and technical perspective. Additionally, these local air quality inspections do not necessarily include all facilities that are potentially subject to the rule.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.

Commenter Name: Linda L. Koop

Commenter Affiliation: Texas Clean Air Cities Coalition (TCACC)

Document Control Number: EPA-HQ-OAR-2008-0508-1037.1

Comment Excerpt Number: 1

Comment: Several of the TCACC members, including the City of Dallas and the City of Ft. Worth, have local air quality programs that have been in existence for many years. Additionally, other cities in Texas that are proposed to be designated as non-attainment under the new ozone standard may develop local education and outreach programs to reduce ozone impacts. The proposed rule states that local agencies will serve a role in educating facilities on the rule and its requirements. It is important to note that these existing local air quality programs receive direction from the State Agency and are currently not approved to conduct education and outreach as part of the contract. The role of the local air quality program is to run the local monitoring stations and to conduct inspections of those facilities which have air quality permits and/or those facilities that have emissions of interest to the State Agency (in particular nitrogen oxides and/or volatile organic compounds). It is also important to note that the inspectors under the program may not be authorized to visit facilities required to report under the proposed rule but are not currently covered under the specific emission interests of the local program. Our member local governments do not currently have the technical and/or financial resources to provide this education or outreach service under the auspices of the local air quality program or otherwise.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule.. Also, note that EPA does not expect local agencies to perform or assist with any implementation activities that they are not authorized to perform by their State agencies.

Commenter Name: Karl Pepple

Commenter Affiliation: City of Houston, Texas

Document Control Number: EPA-HQ-OAR-2008-0508-0699.1

Comment Excerpt Number: 1

Comment: The City has an active local air quality program. In the past few years, resources available from the federal government to support these programs have been reduced. To effectively assist in the implementation of this new proposed program, the federal government should provide training and funding to local air pollution programs.

Response: See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State and local support of the GHG reporting rule, as well as the response to comment EPA-HQ-2008-0508-0587.1, excerpt 7, on outreach and compliance assistance.

Commenter Name: J. Jared Snyder

Commenter Affiliation: New York State Department of Environmental Conservation

Document Control Number: EPA-HQ-OAR-2008-0508-1184

Comment Excerpt Number: 1

Comment: Because state air pollution control agencies are most familiar with the data and sources required to report under this proposal, the Department believes that states should have an opportunity to work with EPA in developing the GHG data format/submission requirements, and review and management of the GHG emissions data submitted under a mandatory reporting rule. Further, the Department believes EPA should consider state needs and reporting initiatives in designing a national GHG reporting program.

Response: See the preamble for the response on the role of States. See the response to comment EPA-HQ-2008-0508-757.1 excerpt 2, on funding for State support of the GHG reporting rule, as well as the response to comment EPA-HQ-2008-0508-0587.1, excerpt 7, on outreach and compliance assistance.

Commenter Name: Fiji George

Commenter Affiliation: El Paso Corporation

Document Control Number: EPA-HQ-OAR-2008-0508-0398.1

Comment Excerpt Number: 5

Comment: The States could have a role to play in reaching out to facilities and providing technical assistance on how to implement the EPA-mandated data reporting.

Response: See the preamble for the response on the role of States in compliance assistance and in data verification activities, and the response on collection, management, and dissemination of GHG emissions data.

Commenter Name: Keith Overcash

Commenter Affiliation: North Carolina Division of Air Quality (NCDAQ)

Document Control Number: EPA-HQ-OAR-2008-0508-0588

Comment Excerpt Number: 3

Comment: The NC DAQ believes that states can play an important role in outreach to our facilities, helping to ensure data quality and verification. We conduct regular inspections and it would be feasible to integrate GHGs along with the criteria and toxic pollutants.

Response: See the preamble for the response on the role of States in compliance assistance and in data verification activities, and the response on collection, management, and dissemination of GHG emissions data.

Commenter Name: Jesse Prentice-Dunn
Commenter Affiliation: None
Document Control Number: EPA-HQ-OAR-2008-0508-0212.1o
Comment Excerpt Number: 3

Comment: The proposed centralized registry is designed to be both efficient and flexible. By running the registry rule itself, the EPA will reduce the burden on State regulators and ensure that all data is moved through the same protocols.

Response: See the preamble section and associated comment response document on the collection, management, and dissemination of GHG emissions data for the response to this comment and the full range of comments on data collection and management.

Commenter Name: Thomas W. Easterly
Commenter Affiliation: Indiana Department of Environmental Management (IDEM)
Document Control Number: EPA-HQ-OAR-2008-0508-0525.1
Comment Excerpt Number: 34

Comment: It is unclear if state agencies will be in charge of reviewing test protocols, observing stack tests, certifying new CEMS/CERMS systems, and observing annual Relative Accuracy Test Audits, and performing quality assurance reviews on emission tests. Indiana is not in a position to incur these responsibilities at this time.

Response: See the preamble for the response on the role of States in compliance and enforcement. See also the response to comment EPA-HQ-OAR-2008-0508-0757.1, excerpt 2.

3. ENFORCEMENT

Commenter Name: See Table 6
Commenter Affiliation:
Document Control Number: EPA-HQ-OAR-2008-0508-0635
Comment Excerpt Number: 46

Comment: Because citizens, particularly employees of entities subject to the final rule, can play an important role in EPA's effective enforcement of the rule, the final rule should include a process providing citizens the right to petition EPA to exercise its enforcement authority under the Act. This will provide added deterrence and incentive for facilities to comply promptly with all requirements of the rule. The rule should not set forth any particular requirements regarding the form of the petition except that it must be in writing and include a full statement of the acts and/or omissions and the pertinent dates that are believed to constitute violations of the rule. EPA should make clear, however, that although the facts alleged in the petition must be sufficient to show the need for further investigation, citizens need not provide full proof of a violation in petitioning EPA. The final rule should also provide that petitions be filed no later than six months after the date of the most recent violation, and that they may request that EPA investigate and prosecute violations alleged to have occurred in previous years. To promote the

exercise of this right, the rule should make clear that the petitioner is not required to notify the alleged violator that s/he is filing a petition. This would allow persons, including employees of an alleged violator, to proceed without fear of retribution. Furthermore, the rule should provide that, upon receipt of a citizen's petition, EPA will have 90 days to investigate the alleged violation and respond to the petitioner.[footnote: 281 If EPA does not respond to the petition within the required timeframe, the rule should state that the petitioner has the right to seek judicial review under section 706 of the Administrative Procedure Act, 5 USC § 706, for violation of a nondiscretionary duty.] Should EPA decide not to prosecute the alleged violation, EPA should provide the petitioner with a written response detailing the investigation that it undertook and the basis for its decision. As an additional safeguard, we propose that upon such a decision, EPA allow the petitioner 30 days to provide an additional written statement and any additional documentation substantiating the alleged violation. The rule should state that EPA's denial of a citizen's petition does not preclude EPA from undertaking any additional investigation of an alleged violation or otherwise prejudice its ability to take enforcement action. Finally, the final rule should make clear that in response to a petition, EPA may take any enforcement action authorized by sections 113 and 203 to 205. EPA should notify both the petitioner and the alleged violator in writing of its decision to take enforcement action. As noted above, the ability of citizens to petition EPA without fear of retribution is of central importance to the efficacy of this proposed process. To further reinforce this ability, the rule should confirm that the whistleblower protections set forth in section 322 of the Act, 42 U.S.C. § 7622, are applicable to an employee of an alleged violator that files a petition for enforcement. Confirming that these protections would apply is important because employees of entities regulated by the Clean Air Act are simultaneously well-positioned to inform EPA of potential violations of the Act but are also particularly vulnerable to retaliatory action. Section 322 of the Act prohibits the discharge of or discrimination by an employer against an employee because the employee "commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or a proceeding for the administration or enforcement of any requirement imposed under this Act." The actions protected by section 322 are broad, and the provision's plain language ("is about to commence or cause to be commenced") does not require that the employee's actions ultimately result in an enforcement action by EPA to be protected. Accordingly, the final rule should provide that the filing of citizen's petition constitutes the commencement of "proceeding" to enforce the Act's requirements within the meaning of section 322 and is thus a protected action. By doing so, EPA would ensure that employees are protected before, during, and after the petition process. In sum, citizens – in particular, employees of entities required to report under the rule – can and should play a key role in ensuring that EPA has all the information required to effectively exercise its enforcement authority under sections 113 and 203 to 205 of the Act. Establishing a citizen's petition process as proposed above would ensure that citizens are able to come forth with such information and that their actions will be adequately protected as well as help deter violations of the rule and provide an additional incentive for prompt compliance.

Response: See the preamble section on compliance and enforcement for the response to this comment on a citizen petition process.

Commenter Name: See Table 6

Commenter Affiliation:

Document Control Number: EPA-HQ-OAR-2008-0508-0635

Comment Excerpt Number: 45

Comment: As EPA recognizes, the GHG Reporting Rule will play a key role in furthering the purposes of the Clean Air Act by establishing a comprehensive inventory of GHG emissions and will inform decisions about whether and how to control those emissions. Given the paramount importance of establishing an accurate inventory of GHG emissions to developing effective policies to mitigate climate change, strong enforcement of the rule is essential. The final rule therefore must contain affirmative statements asserting and relying upon EPA’s enforcement authority under sections 113 and 203 to 205, and should include a process to enable citizens to petition EPA to exercise that enforcement authority. EPA has proposed the GHG Reporting Rule pursuant to its authority under sections 114(a)(1) and 208(a) of the Act. The preamble of the proposed rule states that a noncompliant facility “could potentially be subject to enforcement action by EPA under CAA sections 113 and 203-205.”²⁷⁴ The proposed text of the rule states that “[a]ny violation of the requirements of this part shall be a violation of the Clean Air Act,” but is silent on EPA’s enforcement authority. The proposed rule, however, clearly falls within the ambit of EPA’s enforcement authority under those provisions. Given the importance of this rule, both the preamble and text of the final rule must expressly confirm that authority. With respect to stationary sources, section 113(a)(3) the Act provides that, with certain exceptions not relevant here, the Administrator may issue an administrative penalty order or an order requiring compliance, bring a civil action, or request the Attorney General to commence a criminal action: whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter [Title I], . . . including, but not limited to, a requirement or prohibition of any rule . . . promulgated, issued, or approved under [Title I.] [footnote: 276 42 U.S.C. § 7413(a)(3) (emphasis added)] As a rule promulgated pursuant to Title I, section 114(a)(1) of the Act, the final GHG Reporting Rule will fall squarely within the enforcement authority granted to EPA pursuant to section 113(a)(3). As with stationary sources, EPA’s enforcement authority under Title II of the Act with respect to the monitoring and reporting requirements for mobile source emissions is clear. EPA has proposed those provisions of the GHG Reporting Rule pursuant to its authority under section 208, 42 U.S.C. § 7542.²⁷⁷ Section 208 requires certain persons to “establish and maintain records, perform tests . . . , make reports and provide information the Administrator may reasonably require.” The requirement in the proposed rule that manufacturers of mobile sources monitor and report the GHG emissions is just such a “reasonable” requirement. Section 203 in turn enumerates a series of acts and omissions that are prohibited by the Act and expressly includes a person’s failure to comply with the requirements that the agency establishes under section 208. [footnote: 279 42 U.S.C. § 7522(a)(2).; The following acts and the causing thereof are prohibited – (2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 [§ 208] of this title; for any person to fail or refuse to permit entry, testing or inspection authorized under . . . section 7542 [§ 208] of this title; for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 [§ 208] of this title[.]” 42 U.S.C. § 7522(a)(2)(A)-(C).] Finally, sections 204 and 205 authorize EPA to bring civil and administrative actions to enforce violations of the prohibitions enumerated in section 203. Taken together, the plain language of those provisions unequivocally establishes that once promulgated, the GHG Reporting Rule will definitely – and not “potentially” – be enforceable by EPA under sections 203 to 205. Given the unambiguous language of section 113(a)(3) and sections 203 to 205, EPA’s characterization of the rule as “potentially enforceable” unnecessarily lends uncertainty to a clear issue. Moreover, EPA’s failure to make an affirmative finding at the outset could result in unnecessary delay and litigation by inviting challenges to EPA’s authority. Therefore, we urge EPA in both the preamble and the text of the final rule to assert affirmatively its authority to enforce the rule under sections 113(a)(3) and 203 to 205. In addition to sections 114 and 208 of the Clean Air Act, EPA should consider relying on its authority for research,

investigation, training, and other activities, pursuant to section 103, 42 U.S.C. § 7403. The Administrator may collect and make available “basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof,” as well as related authorities to compile information as part of its research and development program for prevention and control of air pollution. *Id.* § 7403(b); see also *id.* § 7403(g)(1) (authorizing research on carbon dioxide among other pollutants). In general, EPA can base its enforcement authority, and the rule itself, upon broad authorities found throughout the Clean Air Act. See, e.g., § 7671 b (authorizing monitoring and reporting for ozone depleting substances).

Response: See the preamble section on compliance and enforcement for a discussion of actions and inactions that are rule violations and for the response on EPA's enforcement approach. The EPA disagrees with the commenter that the rule and preamble need affirmative statements that EPA has enforcement authority under various sections of the Clean Air Act. Nothing in the rule restricts or changes that authority, which is clearly delineated in the sections of the Clean Air Act cited by the commenter. The rule itself (40 CFR 98.8) and the preamble to the promulgated rule provide a list of example actions and inactions that constitute violations. The statement in the proposal preamble referred to by the commenter that a noncompliant facility "could potentially be subject to enforcement action by EPA" does not affect EPA's enforcement authority under the Clean Air Act. The statement merely reflects the fact that not all potential rule violations will automatically lead to enforcement action. As explained in the preamble response on enforcement, EPA has enforcement discretion to determine the best approach to achieve compliance on a case-by case basis. EPA disagrees with the commenter's assertion that the language in the preamble (specifically the use of the word "potentially") could be used to challenge EPA's authority and to delay enforcement of the rule. On the contrary, that authority is clearly spelled out in the Clean Air Act. See the preamble section on enforcement for the response on the request for a petition process.

Commenter Name: Bruce J. Parker

Commenter Affiliation: National Solid Wastes Management Association

Document Control Number: EPA-HQ-OAR-2008-0508-2126

Comment Excerpt Number: 7

Comment: We understand the need to take action against facilities that deliberately report inaccurate data. As such, we encourage a transition period allowing facilities to learn how to use the new reporting forms and allow EPA to work with reporting facilities to ensure that the facilities are filling out the forms correctly. During this transition period, EPA would concentrate on compliance. EPA should reserve enforcement actions only against those facilities that willfully fail to report accurately and allow revisions to reports when any errors are discovered, without the discovery triggering an enforcement action.

Response: EPA will provide extensive outreach, training, and other compliance assistance as discussed in the section of this document on compliance assistance. However, the enforcement provisions of the rule are critical to achieving EPA's objective of collecting accurate GHG emissions data in a timely manner, so EPA will not preclude taking enforcement actions during the initial year of reporting. EPA has discretion to pursue a variety of informal and formal actions in order to achieve compliance. For additional discussion of compliance and enforcement, including responses on EPA's approach to enforcement, see the preamble section on compliance and enforcement.

Commenter Name: Delaine W. Shane

Commenter Affiliation: Metropolitan Water District of Southern California (MWD)

Document Control Number: EPA-HQ-OAR-2008-0508-0551.1

Comment Excerpt Number: 9

Comment: We recommend that the initial years of reporting focus on education, awareness, and familiarizing entities with the reporting. Enforcement provisions should be postponed to later years and should only apply to recalcitrant entities, not to those making a good faith effort to submit the mandatory reports, or those who may have minor report errors.

Response: See the response to comment EPA-HQ-OAR-2008-0508-2126, excerpt 7.

Commenter Name: Bruce J. Parker

Commenter Affiliation: National Solid Wastes Management Association

Document Control Number: EPA-HQ-OAR-2008-0508-2126

Comment Excerpt Number: 8

Comment: We are concerned that EPA is proposing that any deviation from the reporting requirement would be a violation of the Clean Air Act. Yet under Title V of that Act, a deviation is not always a violation. Instead the Act applies a standard of "reasonable inquiry" to statements made in the many filings, including compliance reporting, under the Act. A signed statement accompanies a submission under Title V, in which a "responsible official" at a facility states "I certify under penalty of law that, based on information and belief formed after reasonable inquiry, the statements and information contained in this application are true, accurate and complete". This standard has worked well for both regulators and the regulated community. We strongly urge EPA to continue its use for these new reporting requirements.

Response: In response to comments, the final rule includes provisions for submitting revised GHG reports as discussed in the preamble section on making corrections to annual reports. See the preamble section on compliance and enforcement for the response on EPA's approach to enforcement. Also see the preamble section and comment response document on data collection for responses on the responsibilities of the designated representative and certification of GHG reports.

Commenter Name: Ronald H. Strube

Commenter Affiliation: Veolia ES Solid Waste

Document Control Number: EPA-HQ-OAR-2008-0508-0690.1

Comment Excerpt Number: 4

Comment: Veolia is concerned that EPA's proposed enforcement policy could potentially trigger a Clean Air Act enforcement action based on errors in reporting, even if the errors are minor and do not result in material misstatements of our emissions. EPA states in the proposed rule that failure to report greenhouse gas emissions according to the requirements of the proposed rule could potentially subject the reporter to enforcement action. EPA is calling for a massive new reporting requirement. Veolia, like numerous other solid waste companies, does not have experience reporting these emissions. As a result, minor mistakes in reporting or associated

recordkeeping, data collection or calculation tasks are likely. These administrative types of mistakes, in the early stages of a massive regulatory initiative, should not be subjected to enforcement actions. We understand the need to take action against facilities that deliberately report inaccurate data. As such, we encourage a transition period allowing facilities to learn how to use the new reporting forms and allow EPA to work with reporting facilities to ensure that the facilities are filling out the forms correctly. During this transition period, EPA would concentrate on compliance. EPA should reserve enforcement actions only against those facilities that willfully fail to report accurately and allow revisions to reports when any errors are discovered, without the discovery triggering an enforcement action.

Response: See the response to comment EPA-HQ-OAR-2008-0508-2126, excerpt 7.

Commenter Name: Bruce J. Parker

Commenter Affiliation: National Solid Wastes Management Association

Document Control Number: EPA-HQ-OAR-2008-0508-2126

Comment Excerpt Number: 5

Comment: We are concerned that EPA's proposed enforcement policy could potentially trigger a Clean Air Act enforcement action based on errors in reporting, even if the errors are minor and do not result in material misstatements of a reporter's emissions. EPA states in the proposed rule that failure to report greenhouse gas emissions according to the requirements of the proposed rule could potentially subject the reporter to enforcement action. EPA is calling for a massive new reporting requirement. Only a few facilities in a limited number of states have prior experience reporting these emissions. As a result, many facilities are likely to make minor mistakes in reporting or associated recordkeeping, data collection or calculation tasks.

Response: See the response to comment EPA-HQ-OAR-2008-0508-2126, excerpt 7.

Commenter Name: Burl Ackerman

Commenter Affiliation: J. R. Simplot Company

Document Control Number: EPA-HQ-OAR-2008-0508-1641

Comment Excerpt Number: 30

Comment: The rule requires numerous measurements such as flow, daily COD, carbon content, etc. There will be instances where equipment failure occurs. The rule provides procedures for estimating missing data, but this does not relieve the obligation to have this information. It is unreasonable to expect there will never be any data gaps due to equipment failure. The rule needs to provide relief from 100% data acquisition.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility. See also the responses to comments on missing data in the preamble section on the emissions verification approach and also the comment response volume on the Approach to Verification and Missing Data.

Commenter Name: Kathy G. Beckett

Commenter Affiliation: West Virginia Chamber of Commerce

Document Control Number: EPA-HQ-OAR-2008-0508-0956.1

Comment Excerpt Number: 22

Comment: EPA proposes to include in the rules a provision, § 98.8, enumerating the potential CAA violations that could be incurred for failing to comply with the rule and stating that "each day of a violation constitutes a separate violation." The Chamber shares the opinion with other commenters that this provision is unwarranted and, in some cases, unreasonable. EPA does not need a rule to identify its enforcement authority. EPA's enforcement authority derives from CAA § 113 and the types of potential violations are determined by the applicable substantive requirements of the rule, and not by some separate "enforcement" provision in the rule. The provision should be removed. In the preamble, EPA states the "merely filling in missing data as specified does not excuse a failure to perform the monitoring or testing." 74 Fed. Reg. 16596. A source that is conducting monitoring according to the required methodology, but that does not achieve 100 percent data availability with that methodology, is not in violation of the rule. This point is particularly relevant to the Part 75 data EPA proposes to require ARP affected units use under this rule. Part 75 imposes stringent quality assurance requirements that can routinely result in missing data. The fact is that even well maintained monitoring systems fail tests, malfunction, or break. Although CO₂ and heat input data availability under Part 75 is generally very high, 100 percent availability was never contemplated and EPA has never suggested that it is required in order to comply with the rule. The Chamber joins other commenters in requesting that EPA withdraw and rephrase that statement (e.g., to say that a source cannot comply with the rule simply by filling in missing data).

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. Also see the response to comment EPA-HQ-OAR-2008-0508-1641, excerpt 30 regarding missing data. EPA disagrees with the commenter that section 98.8 should be removed because it is not needed to identify EPA's enforcement authority. This section is in the final rule to help inform regulated entities of the penalties that are potentially associated with violations of the rules requirements.

Commenter Name: Ushma N. Domadia

Commenter Affiliation: Drexel University Earle Mack College of Law

Document Control Number: EPA-HQ-OAR-2008-0508-0234

Comment Excerpt Number: 6

Comment: As the scope of this program includes tracking direct emissions reductions, accurate data is vital to see if a facility is complying with emissions standards. Enforcing these provisions should include the penalties already stated in the Clean Air Act, sections 113 and 203-205. The Clean Air Act provides for several levels of enforcement that include administrative, civil, and criminal penalties. The Act allows for injunctive relief to compel compliance and civil and administrative penalties of up to \$32,500 per day. As noted in the proposal, missing or recalculating data should not be used in lieu of continuous testing and accurate reporting of data for emissions tracking. However, if a facility shows that it is trying to correct prior data inconsistencies or replace missing data with data for new tests, as long as they are under the 10 percent threshold, they should not be penalized. If they are above the 10 percent threshold, there should be a sliding fine scale that is inversely proportional to the amount of data that is missing or replaced.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. Also see the response to comment EPA-HQ-OAR-2008-0508-1641, excerpt 30 regarding missing data.

Commenter Name: Catherine H. Reheis-Boyd

Commenter Affiliation: Western States Petroleum Association (WSPA)

Document Control Number: EPA-HQ-OAR-2008-0508-0983.1

Comment Excerpt Number: 8

Comment: EPA is considering whether or not to include provisions to require facilities to correct previously submitted data. Under certain circumstances, EPA proposes to reference the procedure available in the California mandatory GHG reporting rule. However, EPA's proposed approach is not comparable to the California program. Consider, for example, provisions concerning data recalculation. The California provision was crafted within the context of a system that relies on third-party verification, where data corrections are permitted - without penalty - following the auditors' review of the preliminary data submitted during a reporting cycle. Corrected inventories are to be submitted following the comments received from verifiers to close the verification cycle. EPA has taken a different approach where it functions as the data verifier. The submitting of recalculated data, or use of 'missing data procedures' would not necessarily reverse a potential rule violation nor would it relieve the reporter of any penalties associated with such a violation. Recommendation: WSPA believes that for the purpose of this reporting rule, rule violations should be defined as non-reporting, late reporting, or egregious violation of reporting procedures. Mere recalculation due to inadvertent mistakes or filling in missing data for a set percentage of data loss should not be considered a violation. Facilities should be allowed the flexibility to resubmit information that was identified as incorrect without ramifications. EPA should specifically stipulate that facilities (and their representatives) would have no liability if they follow the missing data procedures that are specifically outlined in the rule.

Response: In response to comments, the final rule includes provisions for submitting revised GHG reports as discussed in the preamble section on making corrections to annual reports. See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. Also see the response to comment EPA-HQ-OAR-2008-0508-1641, excerpt 30 regarding missing data.

Commenter Name: Kerry Kelly

Commenter Affiliation: Waste Management (WM)

Document Control Number: EPA-HQ-OAR-2008-0508-0376.1

Comment Excerpt Number: 22

Comment: In the preamble to the proposed GHG reporting rule, EPA allows for the possible occurrence of "[d]eviations from the rule that could ultimately be considered violations." (e.g., failure to report GHG emissions; failure to collect data; failure to monitor continuously and test as required; failure to keep records; failure to follow estimation methodology; and falsification of reports.) The proposed rule itself, however, omits the reference to deviations and thus its enforcement provision contains no distinction between deviations that may or may not be determined to be violations. *Id.* at 16,629 (proposed 40 C.F.R. § 98.8). Instead, the rule says simply that the same items listed as deviations in the preamble "shall be" violations of the CAA.

Id. On this point, the rule is as categorical as it could possibly be. ("Any violation of the requirements of this part shall be a violation of the Clean Air Act." Id. (emphasis added)). Thus, the GHG violations section as proposed (Section 98.8) is inconsistent with its preamble, and should be revised, consistent with other environmental reporting regimes, as set forth below: Any deviation from the requirements of this part may, be considered a violation of the Clean Air Act. A deviation includes, but is not limited to, failure to report GHG emissions, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emission, and failure to calculate GHG emissions following the methodologies specified in this part.

Response: See the preamble for the response on enforcement flexibility and penalties. For this reporting rule, EPA will determine on a case-by-case basis whether deviations from the specified requirements would constitute a violation and what type of enforcement action is needed using the discretion that is described in the response in the preamble.

Commenter Name: Robert D. Bessette

Commenter Affiliation: Council of Industrial Boiler Owners (CIBO)

Document Control Number: EPA-HQ-OAR-2008-0508-0513.1

Comment Excerpt Number: 23

Comment: Violation of the requirements in §98.8 - Penalties is treated as a CAA violation, with each day of violation constituting a separate violation. Improperly reporting CO₂ emissions should not be treated the same from a penalty perspective as violating an air permit condition. This is especially true, where EPA has established such a low emission threshold for applicability that thousands of small sources will be covered under this rule. The draconian penalties of the CAA could devastate a small source, even where no environmental impact has occurred. The assessment of such penalties for a reporting violation would be so disproportionate to the violation as to not withstand legal scrutiny. In order to minimize the potential for compliance problems, EPA needs to minimize reporting requirements to only those required for significant quantities, and establish de minimis quantities so that small units are not included in the reporting requirements. See also comment B.1 above.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. Also see the preamble for the responses on the threshold and de minimis reporting. See also the response to comment EPA-HQ-OAR-2008-0508-0376.1, excerpt 22, on determining whether a deviation constitutes a violation.

Commenter Name: Jerry D. Worsham II

Commenter Affiliation: Environmental and Natural Resources, Gammage & Burnham P. L. C.

Document Control Number: EPA-HQ-OAR-2008-0508-0140

Comment Excerpt Number: 2

Comment: The proposed GHG rule at 40 C.F.R. § 98.8 provides: Any violation of the requirements of this part shall be a violation of the Clean Air Act. A violation includes, but is not limited to, failure to report GHG emissions, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emission, and failure to calculate GHG emissions following the methodologies specified in this part. Each day of a violation constitutes a separate violation. EPA

should recognize that a flexible enforcement policy would encourage and maximize voluntary compliance by facilities. COMMENT: EPA has cited Clean Air Act § 307(d)(1)(V)1 "[S]uch other actions the as Administrator may determine." as legal authority for the captioned GHG regulations, and the mandatory reporting of GHG. As such, violations of the proposed GHG emission reporting rules would be enforced as violations of the Clean Air Act under § 113.2 EPA enforcement actions should be legally justifiable, uniform and consistent, and the enforcement response should be appropriate for the violations committed and the equitable facts surrounding the identified reporting violation. I suggest that EPA consider a flexible enforcement policy that includes the following range of enforcement options: A. Warning Letter. A warning letter is a document that EPA may issue in the event that problems are found with a facility's emissions calculations. No penalties would be attached to a warning letter. Warning letters may be an appropriate response for easily correctable deficiencies which do not warrant further action. In the event that a facility does not address the deficiencies noted in a warning letter, EPA could generally pursue an elevated enforcement response. B. Finding of Violation (FOV). FOVs are an appropriate response to violations of a more significant nature but which do not rise to the level of a penalty action. The FOV identifies the statutory or regulatory requirement that has not been satisfied. Failure by the facility to address deficiencies identified in an FOV could result in a penalty action. C. Field Citation. A field citation as described and provided for in CAA § 113(d)(3) may provide the appropriate response to a minor GHG reporting violation. Reduced penalties are appropriate for field citations. D. Preliminary Determination. A preliminary determination could be issued to address discrepancies as a result of a formal EPA review conducted pursuant to 40 C.F.R. § 98.3(f) Verification.3 In the event that the discrepancies uncovered by the EPA formal review warrant a more severe enforcement response, EPA could concurrently or subsequently pursue other enforcement options. E. Administrative Order (AO). An AO pursuant to CAA § 113(a)(3)(B) is a formal action ordering compliance with the CAA. As with an FOV, an AO cites the relevant statutory or regulatory requirement not being met. Failure to address deficiencies identified in an AO should result in a penalty action. F. Penalty Actions. Penalty actions are appropriate for facilities which have significant violations of the regulations or have ignored or failed to adequately respond to less stringent EPA enforcement measures. EPA should determine if the facility owner, designated representative or management are chronic or recalcitrant violators. Proposed Solution: EPA should develop a flexible Enforcement Response Policy that is appropriate for the proposed rule on Mandatory Reporting of Greenhouse Gases. (See Exhibit B - example EPA Policies titled the "Combined Enforcement Policy for CAA Section 112(r) Risk Management Program" and the "Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [Amended]").)

Response: See the preamble section on compliance and enforcement for the response on EPA's approach to enforcement and enforcement flexibility. See also the response to comment EPA-HQ-OAR-2008-0508-0376.1, excerpt 22, on determining whether a deviation constitutes a violation. EPA's enforcement policy under the CAA is a program-wide policy. The same flexibility and discretion that is used in enforcing other CAA programs will be applied to the enforcement of the mandatory GHG reporting rule. Likewise, the same range of enforcement options cited by the commenter that are applied to other rules will be applied to the enforcement of this rule. The language of §98.8 in the rule does not change this approach to enforcement and enforcement flexibility.

Commenter Name: David Stirpe
Commenter Affiliation: Alliance for Responsible Atmospheric Policy (ARAP)
Document Control Number: EPA-HQ-OAR-2008-0508-0527.1
Comment Excerpt Number: 6

Comment: The Proposed Rule does not provide a level of appeal. The TRI appeal process is adequate and should be instituted under this rule.

Response: It is unnecessary for an individual rule to address the appeals processes. EPA has longstanding processes for appealing decisions pertaining to rule implementation decisions that apply across all media programs. This rule will be subject to the same process.

Commenter Name: Maureen Beatty
Commenter Affiliation: National Refrigerants, Inc. (NRI)
Document Control Number: EPA-HQ-OAR-2008-0508-0434.1
Comment Excerpt Number: 17

Comment: There should be some means to appeal EPA determinations adverse to a reporting entity under the reporting requirements.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0527.1, excerpt 6.

Commenter Name: John H. Skinner
Commenter Affiliation: Solid Waste Association of North America (SWANA)
Document Control Number: EPA-HQ-OAR-2008-0508-0659.1
Comment Excerpt Number: 7

Comment: We are concerned about the stringent enforcement requirements, as written in the proposed regulation. The regulation does not distinguish between minor offenses, such as reporting or calculations errors, and major violations, such as knowingly falsifying data. The proposal simply states that facilities that do not comply with the reporting requirements could trigger a CAA violation. In any reporting system, many instances of human error may occur. Therefore, EPA needs to establish an enforcement system that distinguishes between minor and major violations, and allow for at least a one year period for facilities to phase-in their monitoring protocols, without the fear of penalty.

Response: See the preamble for the response on enforcement. Also see the preamble for the response on the initial reporting year and provisions in the final rule that allow use of best available monitoring methods for an initial period of time.

Commenter Name: Roni Neff
Commenter Affiliation: Johns Hopkins University Bloomberg School of Public Health
Document Control Number: EPA-HQ-OAR-2008-0508-0595
Comment Excerpt Number: 4

Comment: There should be significant penalties associated with non-compliance and underreporting, as well as positive incentives for emissions reduction.

Response: See the preamble for the response on enforcement. The rule only requires GHG emissions reporting, and does not require GHG emissions reductions. Therefore, it does not address specific incentives for GHG emissions reductions.

Commenter Name: Brad Bateman

Commenter Affiliation: Western States Dairy Producers Trade Association

Document Control Number: EPA-HQ-OAR-2008-0508-0365.1

Comment Excerpt Number: 13

Comment: The compliance and enforcement provisions are grossly excessive. Administrative penalties of \$32,500 per day, as well as civil and criminal penalties, are not related to the extent of any future alleged GHG reporting violations. The requirement that dairies certify the accuracy of their data is unfair because no dairy owner or operator representative can truthfully submit a signed and certified document promising that the data collected is accurate. The methods of collecting the data, and the formulas used to process the data, are new creations of a government entity and are not based on peer reviewed science. The EPA, in this rulemaking, admits that the accuracy of the data will always be in doubt, yet the rule subjects members of the regulated community to severe penalties if they do not certify accuracy, and if they do certify accuracy but the data is found to be inaccurate. The certification requirement is grossly excessive and arbitrary.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. See also the preamble section and comment response document on manure management for responses to technical comments on that source category. The final rule includes the certification requirement for the accuracy of the data. EPA disagrees with the commenter that the certification statement is excessive and arbitrary. The signer of the certification is attesting to the fact that, to the best of their knowledge, the data are accurate in that they have been collected according to the methods specified in the rule for monitoring and measuring required parameters and calculating annual GHG emissions.

Commenter Name: W. Hugh O'Riordan

Commenter Affiliation: Givens Pursley LLP

Document Control Number: EPA-HQ-OAR-2008-0508-0413.1

Comment Excerpt Number: 13

Comment: The punishment for noncompliance, or simple mistakes, is harsh and severe. Utilities that misreport or fail to report SF₆ nameplate capacity or small SF₆ emissions according to the requirements of the proposed rule could be subject to administrative, civil, and criminal penalties. Administrative penalties alone can amount to \$32,500 per day per violation. These rules are enforceable by state and federal regulators. The Compliance and Enforcement provisions are grossly excessive. Administrative penalties of \$32,500 per day, as well as civil and criminal penalties, are not related to the extent of the alleged violations. The requirement that utilities certify the accuracy of their data is unfair because utilities may not be able to submit a signed and certified document promising that emission data collected is accurate. EPA's use of clean air enforcement mechanisms for GHG reporting is grossly excessive and unfair. The methods of collecting the data, and the formulas used to process the data, are new creations of a government entity. The EPA has admitted that the accuracy of the data will always be in doubt,

yet the rule subjects members of the regulated community to severe penalties if they do not certify accuracy and if they do certify accuracy but the data is found to be inaccurate.

Response: See the preamble section on compliance and enforcement for the response on EPA's approach to enforcement including discussion of enforcement flexibility and penalties. See the response to comment EPA-HQ-OAR-2008-0508-0365.1, excerpt 13 regarding the certification statement. The commenter may have misunderstood EPA's discussion of method accuracy in several places in the proposal preamble and the certification requirement in the rule. No method can be expected to be 100-percent accurate, but some methods are more accurate than others. If a facility calculates and reports GHG emissions by correctly following the procedures and requirements in the GHG mandatory reporting rule, including the monitoring and QA/QC requirements, the facility would not be subject to penalties if a more accurate method of measuring GHG emissions has a different result. The certification means that the facility has correctly followed the rule requirements for calculating and reporting GHG emissions.

Commenter Name: See Table 7

Commenter Affiliation:

Document Control Number: EPA-HQ-OAR-2008-0508-0433.2

Comment Excerpt Number: 33

Comment: As noted in the Preamble, the proposed rule incorporates all typical enforcement tools available under the Clean Air Act. The use of such tools is troublesome given other aspects of the proposed rule, particularly the breadth of the recordkeeping, reporting, monitoring, calculations, and other data collection required by the proposal. Much of this data collection is unnecessary. As such, it creates additional concerns regarding enforcement. First, it subjects an owner and operator, and the designated representative, to potential criminal, civil, and administrative penalties if unnecessary data is not collected. Second, there is no concept of materiality in the failure to collect and report information, and this should be included. For example, in the California Air Resources Board's (CARB) rules, a report can receive a positive verification opinion if it is free from "material misstatement." "Material misstatement" means one or more inaccuracies identified in the course of verification that result in the total reported emissions, or reported purchases, sales, imports or exports of electricity, being outside the 95 percent accuracy required to receive a positive verification opinion. (Sec. 95100(113)) This is explained in further detail in CARB's "Mandatory Reporting of Greenhouse Gas Emissions – Instructional Guidance for Operators," "To enable a positive verification opinion, a GHG emissions data report must be found by the verification team to be free of material misstatement and to conform to the requirements of the regulation. For an emissions report to be free of material misstatement, the verification team must find that the report contains no errors that could not result in facility-wide CO₂e emissions being less than 95 percent accurate. This means that errors in emissions estimation adding up to 5 percent of the overall facility CO₂e emissions are allowed. For an emissions report to conform to the requirements of the regulation means that regulation standards and methods were observed by the operator in report preparation." (Section 6.3, page 6-2, CARB's "Mandatory Reporting of Greenhouse Gas Emissions – Instructional Guidance for Operators," December 2008) NPRA urges EPA to incorporate a materiality standard into the regulation, such that errors that do not materially impact the facility-wide GHG emissions estimation by more than 5 % are immaterial. Therefore, such errors should not be subject to enforcement. Finally, the certification required by the proposed rule requires that the DR certify "that the statements and information are to the best of my knowledge and belief true, accurate, and complete." However, several of the calculation methodologies required by the

proposed rule would result in inaccurate emissions estimations. Therefore, the DR cannot certify that the information is “true and accurate” when the rule prescribes calculations resulting in inaccurate estimations.

Response: See the preamble section on compliance and enforcement for the response on EPA’s approach to enforcement including discussion of enforcement flexibility and penalties. After reviewing this comment, EPA is not including a “materiality” provision in the final rule, as suggested by the commenter. The rule specifies the sources for which emissions are to be estimated, the specific data that are to be collected, the required methods to collect each data element, and the procedures used to calculate emissions of each GHG. The specificity of this reporting rule is different from many other GHG reporting programs that include a materiality standard where the emission sources, data collection, and GHG calculation methodologies are less specific and sources may use different methods as long as emissions estimates are within a 5 percent range. For this reporting rule, EPA will determine on a case-by-case basis whether deviations from the specified requirements would constitute a violation and what type of enforcement action is needed using the discretion that is described in the response in the preamble. Therefore, it is not necessary to establish a materiality provision with a specific percent accuracy. Regarding the comment on the designated representative’s certification statement, see the response to comment EPA-HQ-OAR-2008-0365.1, excerpt 13.

Commenter Name: Keith Adams

Commenter Affiliation: Air Products and Chemicals, Inc.

Document Control Number: EPA-HQ-OAR-2008-0508-1142.1

Comment Excerpt Number: 16

Comment: As noted in the Preamble, the proposed rule incorporates all typical enforcement tools available under the Clean Air Act. Deviations from the rule that could ultimately be considered violations include but are not limited to the following: 1. Failure to report GHG emissions. 2. Failure to collect data needed to estimate GHG emissions. 3. Failure to continuously monitor and test as required. Note that merely filling in missing data as specified does not excuse a failure to perform the monitoring or testing. 4. Failure to keep records needed to verify GHG emissions estimates. 5. Failure to estimate GHG emissions according to the methodology(s) specified in the rule. The risk of such non-compliance is high given other aspects of the proposed rule, particularly the breadth of the recordkeeping, reporting, monitoring, calculations, and other data collection required by the proposal. Air Products recommends EPA instead consider the concept of materiality in making a determination of non-compliance or deviation from the rule. For example, in the California’s mandatory GHG reporting rules, an emission report can receive a positive verification opinion if it is free from “material misstatement.” “Material misstatement” means one or more inaccuracies identified in the course of verification that result in the total reported emissions, or reported purchases, sales, imports or exports of electricity, being outside the 95 percent accuracy required to receive a positive verification opinion. (Sec. 95100(113)) Air Products urges EPA to incorporate a materiality standard into the regulation, such that errors that do not materially impact the facility-wide GHG emissions estimation by more than 5 % are immaterial. Therefore, such errors should not be subject to enforcement.

Response: See the preamble section on compliance and enforcement for the response on EPA’s approach to enforcement. See the response to comment EPA-HQ-OAR-2008-0508-0433.2, excerpt 33, on including a “materiality provision.”

Commenter Name: See Table 4

Commenter Affiliation:

Document Control Number: EPA-HQ-OAR-2008-0508-0412.1

Comment Excerpt Number: 16

Comment: GPA would like to clarify that if EPA adopts a program where sources self-certify their emissions data and EPA verifies the data, there must be an actual verification process. GPA does not support a process that grants verification authority and responsibility to EPA while also permitting EPA as the enforcing agency to take immediate, pre- verification enforcement action against a reporting entity for alleged violations relating to reported data. Specifically, pursuant to its verification authority EPA should be required to provide non-enforcement notification to the source indicating that the agency disagrees with emissions numbers reported. Following the receipt of such a notice, there should be a reconciliation process with the source prior to the availability of any EPA enforcement action. For example, even if a source submits corrections to EPA, no enforcement action should be taken against that source without first undergoing defined reconciliation protocols.

Response: EPA intends to verify the data and to notify reporters of errors discovered, as described in the preamble responses on the emissions verification approach, making corrections to annual reports, and data collection and handling. In response to comments, the final rule includes a time period for submitting revised reports to correct errors. EPA's preference is to work with reporters to correct errors; however EPA does not preclude enforcement action depending on the specific situation. See the preamble for the response on enforcement.

Commenter Name: R. Skip Horvath

Commenter Affiliation: Natural Gas Supply Association (NGSA)

Document Control Number: EPA-HQ-OAR-2008-0508-0594.1

Comment Excerpt Number: 3

Comment: NGSA recommends coupling a 'safe harbor' protection for good-faith reporting with any effective date chosen. A 'safe harbor' provision allows those who are required to meet the terms of the Proposed Rule, to comply as EPA intends without being penalized if unintended errors in data reporting occur. In the past, the Federal Energy Regulatory Commission ("FERC") has worked with NGSA to include similar provisions in its reporting regulations. Because the Proposed Rule is complex and lengthy, unintended reporting errors should not be penalized without granting the reporting party an opportunity to make the necessary corrections and adjustments. Safe harbor protections for good-faith reporting are needed not only while the industry adopts compliance protocols for this new reporting obligation, but also in the longer term to support the policy of a complete inventory, which will serve as the basis for future policy decisions. The industry should be allowed to work through the issues raised by this economy wide, highly technical rule without fear of an unintended violation and resulting penalty.

Response: See the preamble section on compliance and enforcement for the response on EPA's approach to enforcement including discussion of enforcement flexibility and penalties. See also the response to comment EPA-HQ-OAR-2008-0508-0140, expert 2. The CAA allows EPA discretion to pursue a variety of informal and formal actions in order to achieve compliance. While EPA is committing to working with reporters to ensure accuracy, this does not relieve

them of their obligation to report data that are complete, accurate, and in accordance with the requirements of this rule.

Commenter Name: Lisa Jacobson

Commenter Affiliation: Business Council for Sustainable Energy (BCSE)

Document Control Number: EPA-HQ-OAR-2008-0508-0632.1

Comment Excerpt Number: 6

Comment: The council advocates for EPA to provide “safe harbor” protections where penalties are not immediately assessed for unintended data reporting errors. Safe harbor protections are not without precedent; the Federal Energy Regulatory Commission has granted such protections in the past.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0594.1, excerpt 3.

Commenter Name: Shannon Broome

Commenter Affiliation: Air Permitting Forum

Document Control Number: EPA-HQ-OAR-2008-0508-0524.1

Comment Excerpt Number: 9

Comment: Given the amount of information that is going to be required to be analyzed by this rule, the final rule should recognize that information will be estimated and that errors can be made and corrected. First, EPA should state clearly that information later found to be in error that was submitted in good faith after a reasonable inquiry is not a violation of the rules, provided that the facility corrects the submittal within a reasonable time period after discovery.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0594.1, excerpt 3.

Commenter Name: Fiji George

Commenter Affiliation: El Paso Corporation

Document Control Number: EPA-HQ-OAR-2008-0508-0398.1

Comment Excerpt Number: 18

Comment: El Paso requests a “safe harbor” provision be added under Section 98.3. As explained above, the proposed mandatory reporting will require significant effort and resources. El Paso requests that EPA promulgate a one-year safe harbor provision for the first year of reporting. EPA can draw from such prior regulatory precedence granted by the Federal Energy Regulatory Commission (FERC). The FERC granted a one-year safe harbor provision when it issued Order No. 704, which requires the reporting of natural gas transactions (FERC Form No. 552). This allowed the respondents to “benefit from a reputable presumption that the data provided is accurate and submitted in good faith. Further, we [the FERC] do not intend to penalize respondents for errors in reporting on Form No. 552 provided that respondents use reasonable efforts to comply with the regulations regarding and instructions for Form No. 552. We [the FERC] emphasize that the Commission expects respondents submitting Form No. 552 in 2009 to do so in good faith and on a timely basis.”

Response: See the response to comment EPA-HQ-OAR-2008-0508-0594.1, excerpt 3 on “safe harbor” protection, and also see comment EPA-HQ-OAR-2008-0508-2126, excerpt 7 on reserving enforcement actions

Commenter Name: Kerry Kelly

Commenter Affiliation: Waste Management (WM)

Document Control Number: EPA-HQ-OAR-2008-0508-0376.1

Comment Excerpt Number: 21

Comment: Under the enforcement provisions of the proposal, "any" failure to comply with "any" requirement of the rule is a violation of the Clean Air Act ("CAA"), susceptible to per day penalties of up to \$32,500: Any violation of the requirements of this part shall be a violation of the Clean Air Act. A violation includes, but is not limited to, failure to report GHG emissions, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emission, and failure to calculate GHG emissions following the methodologies specified in this part. Each day of a violation constitutes a separate violation. Proposed 40 C.F.R. § 98.8, 74 Fed. Reg. 16,448, 16,629 (Apr. 10, 2009). Waste Management submits that this strict enforcement approach is not consistent with the legislative grant of authority to EPA, and it is unnecessarily stringent and inappropriate for the GHG reporting rule and is inconsistent with the Preamble of the Rule.

Response: The commenter does not explain why it believes this enforcement approach is inconsistent with EPA’s authority. See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. See the response to comment EPA-HQ-OAR-2008-0508-0635, excerpt 45, which states that nothing in the rule restricts or changes EPA’s enforcement authority under CAA sections 113, and 203 to 205. The language of §98.8 does not affect the discretion and flexibility that EPA has in its CAA enforcement and compliance programs and which can be used in enforcing the mandatory GHG reporting rule and encouraging compliance. See also the responses to comments EPA-HQ-OAR-2008-0508-0376.1, excerpt 22; EPA-HQ-OAR-2008-0508-0140, excerpt 2; and EPA-HQ-OAR-2008-0508-0433.2, excerpt 33; for additional discussion of EPA’s discretion and enforcement flexibility. See the response to comments for legal issues for a general discussion of EPA’s authority to issue this rule.

Commenter Name: Kerry Kelly

Commenter Affiliation: Waste Management (WM)

Document Control Number: EPA-HQ-OAR-2008-0508-0376.1

Comment Excerpt Number: 23

Comment: WM recommends EPA strike the language "Each day of a violation constitutes a separate violation" from the proposed regulation, because it differs from that set forth in the Clean Air Act, which authorizes EPA to recover civil and administrative penalties "per day for each violation" or "per day of violation[.]" CAA § 113(b), (d). Waste Management is concerned that the language in the proposal could lead to confusion over the breadth of penalties that EPA may (or must) seek for a single "violation." Extensive case law over the past two decades has distinguished between one-time violations and continuing violations. One-time violations, such as the failure to file a report, are "complete" on the day that the report is not filed; the mere continuation of harm (such as the failure to remedy a past violation) does not convert a single

violation into a continuing one. See, e.g., *Toussie v. United States*, 397 U.S. 112 (1970); *Center for Biological Diversity v. Hamilton*, 453 F.3d 1331 (1111 Cir. 2006); *United States v. Westvaco Corp.*, 144 F. Supp. 2d 439 (D. Md. 2001). Because a one-time violation is inherently a single "day of violation," any penalties for such a violation must be limited to a single day. The broad language contained in the proposal, however, could be interpreted as an attempt to convert one-time reporting violations into ongoing violations subject to daily penalties until they are corrected. Waste Management does not believe that EPA intended such a broad construction because that construction would be inconsistent with the CAA and case law. Moreover, automatically converting every violation into an ongoing violation subject to daily penalties would needlessly hamper EPA's enforcement discretion, thus interfering with the Agency's ability to reach expeditious, reasonable settlements.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. EPA disagrees with the commenter that reporter actions or inactions, such as a failure to report GHG emissions, could lead to only one-time violations. For many source categories, reporters are required to collect information on an ongoing (e.g. daily, weekly, continuous) basis to calculate GHG emissions. The failure to collect the required data would be ongoing violations and, in some cases, could be subject to daily penalties. The nature and extent of the penalty would be determined on a case-by-case basis.

Commenter Name: Peter Boag

Commenter Affiliation: Canadian Petroleum Products Institute (CPPI)

Document Control Number: EPA-HQ-OAR-2008-0508-0428.1

Comment Excerpt Number: 9

Comment: Regulating authority is responsible for enforcement. The principal purpose of a central depository should be for harmonization assurances.

Response: See the preamble for the response on enforcement. As explained in the preamble, annual GHG reports will be submitted directly to EPA, and EPA will verify the data and is responsible for rule enforcement activities.

Commenter Name: William C. Herz

Commenter Affiliation: The Fertilizer Institute (TFI)

Document Control Number: EPA-HQ-OAR-2008-0508-0952.1

Comment Excerpt Number: 56

Comment: Under the proposed 40 C.F.R. § 98.8, any violation of the reporting requirements constitutes a violation of the CAA, with each day of violation constituting a separate violation. EPA should revise the NPRM to establish a uniform procedure for enforcement, requiring (1) notice and opportunity to cure any violation, (2) a notice of violation, (3) a preliminary determination with a hearing and (4) an official enforcement action. Such procedures encourage voluntary disclosure and correction of violations and avoid undue penalties where the infraction is solely a minor reporting mistake or due to agency error.

Response: See the preamble section on compliance and enforcement for the response on EPA's approach to enforcement. As described in the preamble, EPA has discretion to pursue a variety

of informal and formal actions in order to achieve compliance. See also the response to comment EPA-HQ-OAR-2008-0508-0140, excerpt 2.

Commenter Name: Ram K. Singhal
Commenter Affiliation: Rubber Manufacturers Association (RMA)
Document Control Number: EPA-HQ-OAR-2008-0508-0600
Comment Excerpt Number: 8

Comment: If EPA does not change the effective date to January 1, 2011, reporting should not be enforceable through the civil and criminal penalties in the proposed rule until the reporting year 2012 in order to give facilities time to create the monitoring and recordkeeping and reporting systems that will be necessary to implement and comply with these significant requirements.

Response: The enforcement provisions of the rule are critical to achieving EPA's objective of collecting accurate GHG emissions data in a timely manner, so EPA will not preclude taking enforcement actions during the initial year of reporting. However EPA has discretion to pursue a variety of informal and formal actions in order to achieve compliance. EPA will provide extensive outreach, training, and other assistance as discussed in the section of this document on compliance assistance. For additional discussion of compliance and enforcement, including responses on EPA's approach to enforcement, see the preamble section on compliance and enforcement. Also see the preamble for the response on the initial reporting year.

Commenter Name: Fredrick Palmer and Dianna Tickner
Commenter Affiliation: Peabody Energy
Document Control Number: EPA-HQ-OAR-2008-0508-0552.1
Comment Excerpt Number: 7

Comment: EPA should provide that the standard for applying sanctions for a failure to report during the first three years of the program is bad faith or gross neglect. A ramp-up period is justified given the newness of the reporting standards.

Response: See the response to comment EPA-HQ-OAR-2008-0508-0600, excerpt 8 for the response on why EPA is not phasing in enforcement and does not preclude taking enforcement action during the first reporting year. Rather than apply a single standard for enforcement (e.g., bad faith or neglect), EPA retains discretion and flexibility to apply enforcement actions on a case-by-case, and to work with sources when possible to encourage compliance and avoid enforcement actions.

Commenter Name: Melinda L. Tomaino
Commenter Affiliation: Associated General Contractors of America (AGC)
Document Control Number: EPA-HQ-OAR-2008-0508-0628.1
Comment Excerpt Number: 8

Comment: The proposed rule establishes a strict enforcement policy under the Clean Air Act. According to the proposed rule— "Facilities that fail to report GHG emissions according to the requirements of the proposed rule could potentially be subject to enforcement action by EPA under CAA sections 113 and 203-205. The CAA provides for several levels of enforcement that include administrative, civil, and criminal penalties. The CAA allows for injunctive relief to

compel compliance and civil and administrative penalties of up to \$32,500 per day.” The proposed rule goes on to reference deviations (e.g., failure to collect data, to report data, failure to continuously test and monitor) that could ultimately be considered a violation. The proposed rule does not limit EPA to those deviations listed in the proposed rule. AGC urges EPA to recognize the large number of small facilities that may be impacted by the proposed rule and the inexperience they may have with meeting reporting requirements. Even facilities that are familiar with reporting under separate programs occasionally have errors and deviations. EPA should allow for a learning curve for the new requirements and establish an enforcement strategy that includes several options such as warning letters, citations, and “right to cure” provisions. EPA could push back the reporting dates for some facilities based on low levels of emissions. AGC encourages EPA implement a flexible enforcement policy, especially if EPA decides to require reporting from small emitters, such as homes and commercial buildings. Due to the short period of time EPA is allowing before the proposed rule is finalized and goes into effect, it is entirely reasonable to expect that many facilities will not know whether they are required to report emissions and/or have not coordinated the steps necessary to assess their emissions level. In addition, EPA noted that it plans to produce several sector-specific compliance assistance tools, but the agency did not commit to having these available in time to prepare the newly regulated businesses.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. See also the response to comment EPA-HQ-OAR-2008-0508-0587.1, excerpt 7, in section 1 of this document for additional discussion on compliance assistance and the use of compliance tools. Also see the preamble for the response on making corrections to annual reports.

Commenter Name: Glenn Hamer

Commenter Affiliation: Arizona Chamber of Commerce and Industry

Document Control Number: EPA-HQ-OAR-2008-0508-0564.1

Comment Excerpt Number: 5

Comment: EPA has cited Clean Air Act § 307(d)(1)(V) “[S]uch other actions as the Administrator may determine.” as legal authority for the captioned GHG regulations, and the mandatory reporting of GHG. As such, violations of the proposed GHG emission reporting rules would be enforced as violations of the Clean Air Act under § 113 and §§ 203-205. EPA enforcement actions should be legally justifiable, uniform and consistent, and the enforcement response should be appropriate for the violations committed and the equitable facts surrounding the identified reporting violation. The Arizona Chamber suggests that EPA consider a flexible enforcement policy that includes the following range of enforcement options:

1. **Warning Letter.** A warning letter is a document that EPA may issue in the event that problems are found with a facility emissions calculations. No penalties would be attached to a warning letter. Warning letters may be an appropriate response for easily correctable deficiencies which do not warrant further action. In the event that a facility does not address the deficiencies noted in a warning letter, EPA could generally pursue an elevated enforcement response.
2. **Finding of Violation (FOV).** FOVs are an appropriate response to violations of a more significant nature but which do not rise to the level of a penalty action. The FOV

3. Field Citation. A field citation as described and provided for in CAA § 113(d)(3) may provide the appropriate response to a minor GHG reporting violation. Reduced penalties are appropriate for field citations.
4. Preliminary Determination. A preliminary determination could be issued to address discrepancies as a result of a formal EPA review conducted pursuant to 40 C.F.R. § 98.3(f) Verification. In the event that the discrepancies uncovered by the EPA formal review warrant a more severe enforcement response, EPA could concurrently or subsequently pursue other enforcement options.
5. Administrative Order (AO). An AO pursuant to CAA § 113(a)(3)(B) is a formal action ordering compliance with the CAA. As with an FOV, an AO cites the relevant statutory or regulatory requirement not being met. Failure to address deficiencies identified in an AO should result in a penalty action.
6. Penalty Actions. Penalty actions are appropriate for facilities which have significant violations of the regulations or have ignored or failed to adequately respond to less stringent EPA enforcement measures.

EPA should determine if the facility owner, designated representative or management are chronic or recalcitrant violators. Proposed Solution: The Arizona Chamber asserts that EPA should develop a flexible Enforcement Response Policy that is appropriate for the proposed rule on Mandatory Reporting of Greenhouse Gases. (See example EPA Policies titled the “Combined Enforcement Policy for CAA Section 112(r) Risk Management Program” and the “Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [Amended]”.)

Response: See the preamble section on compliance and enforcement for the response on EPA’s approach to enforcement. See also the response to comment EPA-HQ-OAR-2008-0508-0140, excerpt 2 for additional discussion of the range of enforcement options available to EPA.

Commenter Name: Timothy O'Connor

Commenter Affiliation: Environmental Defense Fund

Document Control Number: EPA-HQ-OAR-2008-0508-0228h

Comment Excerpt Number: 7

Comment: Being an environmental group, we really think that reliability and transparency and accountability are going to be some critical components of this national system. Accountability is going to be necessary to ensure members are responsible and to ensure that the data is reliable. EPA must establish rules that ensure robust and accurate reporting, and these should include certification, verification, inspection and other rigorous enforcement and oversight tools. Where reporting is deficient, we urge EPA to take swift and effective action to ensure future compliance.

Response: See the preamble for the response on compliance and enforcement.

Commenter Name: Thomas Diamond

Commenter Affiliation: Semiconductor Industry Association (SIA)

Document Control Number: EPA-HQ-OAR-2008-0508-0498.1

Comment Excerpt Number: 32

Comment: On page 16595 and 16596, EPA has identified a number of violations subject to EPA enforcement. The proposed GHG rule at 40 C.F.R. § 98.8 provides: Any violation of the requirements of this part shall be a violation of the Clean Air Act. A violation includes, but is not limited to, failure to report GHG emissions, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emission, and failure to calculate GHG emissions following the methodologies specified in this part. Each day of a violation constitutes a separate violation. EPA has cited Clean Air Act § 307(d)(1)(V)5 “[S]uch other actions as the Administrator may determine.” as legal authority for the captioned GHG regulations, and the mandatory reporting of GHG. As such, violations of the proposed GHG emission reporting rules would be enforced as violations of the Clean Air Act under § 113 and §§ 203-205.6 EPA enforcement actions should be legally justifiable, uniform and consistent, and the enforcement response should be appropriate for the violations committed and the equitable facts surrounding the identified reporting violation. SIA appreciates that the Proposed Rule, when finalized, would be legally enforceable. We would urge EPA, however, to recognize the significant initial challenges that will be posed by any new GHG reporting regime. Not only will companies need to create new compliance systems, but EPA also likely will need to supplement any final rule creating such a regime with guidance to address technical nuances or to clarify ambiguities. Consistent with EPA’s existing enforcement policies and practice, therefore, SIA believes that enforcement should account for these initial challenges by using less aggressive mechanisms, such as the warning letter, and by encouraging industry to perform auditing and otherwise to take advantage of EPA’s Self-Disclosure Policy.[Footnote: Incentives for Self-Policing; Discovery, Disclosure and Prevention of Violations; Notice, 65 Fed. Reg. 19618 (Apr. 11, 2000).]

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties.

Commenter Name: T. Moore

Commenter Affiliation: Drexel University Earle Mack College of Law

Document Control Number: EPA-HQ-OAR-2008-0508-0236

Comment Excerpt Number: 2

Comment: I would like to suggest that the EPA establish compliance and enforcement mechanisms. For example, what will happen to those who make late submissions, false submissions, or no submissions at all? While I think that many businesses will report I also think that those who severely or constantly exceed the threshold of 25,000 metric tons will not report. As a result, these businesses will need incentives to report. The incentives can be positive as well. For instance, businesses could receive economic incentives such as tax credits. In addition, incentives such as penalty mitigation, reduced fines, and warnings instead of penalties. However, I also think that there should be civil penalties and fines for repeat offenders who exceed the threshold and intentionally submit late, make false submissions, or those who fail to submit report.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. The EPA has no authority to provide positive economic incentives to GHG reporters. However, the CAA does provide for civil penalties for a failure to comply.

Commenter Name: C. Harman

Commenter Affiliation: None

Document Control Number: EPA-HQ-OAR-2008-0508-0172

Comment Excerpt Number: 3

Comment: It is an enforcement nightmare. What are the proposed penalties for non-compliance?

Response: See the preamble for the response on compliance and enforcement.

Commenter Name: J. L. Dougherty

Commenter Affiliation: Drexel University Earle Mack College of Law

Document Control Number: EPA-HQ-OAR-2008-0508-0235.1

Comment Excerpt Number: 5

Comment: Penalties would have to be enforced and severe for those that either do not submit, submit poor data, or submit data late.

Response: See the preamble for the response on compliance and enforcement.

Commenter Name: P. Horan

Commenter Affiliation: None

Document Control Number: EPA-HQ-OAR-2008-0508-0257.1

Comment Excerpt Number: 3

Comment: The second issue I would like to comment on is the issue of enforcement. The description of the enforcement in the proposal is enough to keep the topic on the minds of those effected, but I would imagine that a reporting standard of this size would still come with a large number of non-compliers. This reporting will be expensive, and it will bear avoiders. With the importance of this reporting in mind, I would recommend making a very stout enforcement standard for this rule. It is not only an important program, but it is difficult to implement. Strict enforcement will be necessary.

Response: See the preamble for the response on compliance and enforcement.

Commenter Name: Robert Naerebout

Commenter Affiliation: Idaho Dairymen's Association, Inc.

Document Control Number: EPA-HQ-OAR-2008-0508-0314.1

Comment Excerpt Number: 21

Comment: Administrative penalties of \$32,500 per day, as well as civil and criminal penalties, are unnecessary and not related to the extent of the alleged violations.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties.

Commenter Name: See Table 2

Commenter Affiliation:

Document Control Number: EPA-HQ-OAR-2008-0508-0367.1

Comment Excerpt Number: 1

Comment: The proposed rule is massive in scope, and requires monitoring, recordkeeping, reporting and related data management to be implemented in a very short period of time, with potentially rigid and substantial penalties for failure to comply fully under the Clean Air Act (CAA). The proposed rule would impose these requirements if finalized on broad segments of our economy, some of which are much less familiar with and prepared to implement significant new requirements of the CAA. AXP understands and appreciates the EPA's sense of urgency in getting the rule proposed and in not granting multiple industry requests for an extension of the comment period, but does believe that some acknowledgement in the final rule concerning the Agency's use of enforcement discretion with respect to alleged violations in the first annual reporting period is appropriate under these unusual, if not unprecedented, Circumstances.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties.

Commenter Name: Mark Gibbons

Commenter Affiliation: Dairy Producers of Utah

Document Control Number: EPA-HQ-OAR-2008-0508-1567

Comment Excerpt Number: 6

Comment: If we are just required to report in order for the EPA to collect and review data, why attach a severe penalty to an infraction of not reporting? Make it simple and most will do it without requiring threats.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties.

Commenter Name: Michael S. Dae

Commenter Affiliation: Energy Developments, Inc. (EDI)

Document Control Number: EPA-HQ-OAR-2008-0508-0706.1

Comment Excerpt Number: 6

Comment: According to the proposed Rule, any failure to comply with any requirement of the Rule is deemed a violation of the Clean Air Act and subject to harsh penalties (up to \$32,500), levied on a daily basis. This is unusually strict when compared to other agency enforcement processes for deviations. The enforcing of this reporting rule as written, allows little latitude in enforcement. EDI suggests that these provisions be reevaluated, particularly in the listing of "any" failure to comply with "any" provision resulting in these severe penalties.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. See also the response to comment EPA-HQ-OAR-2008-0508-03761, excerpt 22, on EPA's case-by-case determination on whether deviations from the specific requirement will constitute a violation.

Commenter Name: Ronald H. Strube

Commenter Affiliation: Veolia ES Solid Waste

Document Control Number: EPA-HQ-OAR-2008-0508-0690.1

Comment Excerpt Number: 6

Comment: Veolia is concerned that EPA is proposing that any deviation from the reporting requirement would be a violation of the Clean Air Act. Yet under Title V of that Act, a deviation is not always a violation. Instead the Act applies a standard of "reasonable inquiry" to statements made in the many filings, including compliance reporting, under the Act. A signed statement accompanies a submission under Title V, in which a "responsible official" at a facility states "I certify under penalty of law that, based on information and belief formed after reasonable inquiry, the statements and information contained in this application are true, accurate and complete". This standard has worked well for both regulators and the regulated community. We strongly urge EPA to use the above language for these new reporting requirements.

Response: See the preamble for the response on compliance and enforcement. Also see the preamble section and comment response document on data collection for responses on the responsibilities of the designated representative and certification of GHG reports. See also the response to comment EPA-HQ-OAR-2008-0508-03761, excerpt 22, on EPA's case-by-case determination on whether deviations from the specific requirement will constitute a violation.

Commenter Name: Angela Burckhalter

Commenter Affiliation: Oklahoma Independent Petroleum Association (OIPA)

Document Control Number: EPA-HQ-OAR-2008-0508-0386.1

Comment Excerpt Number: 36

Comment: EPA proposes that facilities that fail to report GHG emissions according to the proposed requirements be subject to administrative, civil, and criminal penalties under the CAA which allows penalties of up to \$32,500 per day, and each day of a violation constitutes a separate violation. This is excessive, unwarranted and inappropriate for a rule that requires the reporting of data only. EPA should implement an enforcement policy that makes reporting entities aware of the non-compliance activities and provides them a reasonable opportunity to comply prior to assessing any penalties or violations.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties.

Commenter Name: Kusai Merchant

Commenter Affiliation: Environmental Defense Fund

Document Control Number: EPA-HQ-OAR-2008-0508-0212.1h

Comment Excerpt Number: 7

Comment: Where reporting is deficient, EPA must take swift and effective action to ensure future compliance.

Response: See the preamble for the response on compliance and enforcement.

Commenter Name: Jay M. Dietrich

Commenter Affiliation: IBM

Document Control Number: EPA-HQ-OAR-2008-0508-0978.1

Comment Excerpt Number: 11

Comment: Within the Proposed Rule, EPA has indicated that it intends to treat the GHG reporting process and information in accordance with Clean Air Act Reporting and Enforcement requirements. These requirements have been established for reporting facility operating information to ascertain compliance with specific regulatory or permit-based emissions limits. In contrast, the Proposed Rule provides reporting of GHG emissions inventory for the purposes of establishing a National Database of GHG Emissions to inform legislative and regulatory policy decisions. It is important to recognize that even with a facility's best efforts, these GHG annual emission reports are based on estimates or calculations which, in retrospect, may need to be modified or revised with time or as new information becomes available. As such, the reporting requirements, ability to amend reports if errors or omissions are identified and enforcement should be more in accordance with other reporting programs such as the Toxic Release Inventory reporting.

Response: See the preamble for the response on enforcement. Also see the preamble for the response on making corrections to annual reports.

Commenter Name: Shannon Broome

Commenter Affiliation: Air Permitting Forum

Document Control Number: EPA-HQ-OAR-2008-0508-0524.1

Comment Excerpt Number: 8

Comment: EPA should revise the penalty provisions in the proposal and reconcile them with any approach adopted regarding requirements for facilities to correct previously submitted data under certain circumstances. The proposal states that penalties up to \$32,500 per day could be imposed for failure to report GHG emissions, failure to collect data needed to estimate GHG emissions, failure to continuously monitor and test as required (noting that merely filling in missing data as specified does not excuse a failure to perform the monitoring or testing), failure to keep records needed to verify GHG emissions estimates, failure to estimate GHG emissions according to the methodology(s) specified in the rule, and falsification of reports. 74 Fed. Reg. at 16,595-16,596. While we agree that falsifying reports should be subject to penalties, we find the other categories overly broad given the purpose of the rule. As EPA rightly points out, it may not even make sense to correct older reports given that the benefits of correction may be outweighed by the "additional costs associated with requiring reporters to recalculate and resubmit previous data, and the magnitude of emissions changes expected from such recalculations." 74 Fed. Reg. at 16,474.

Response: See the preamble section on compliance and enforcement for the response on enforcement flexibility and penalties. Also see the preamble for the response on making corrections to annual reports.

Commenter Name: See Table 5

Commenter Affiliation:

Document Control Number: EPA-HQ-OAR-2008-0508-1021.1

Comment Excerpt Number: 15

Comment: In any discussion of enforcement, EPA should clarify that the applicability of any CAA provision that would permit the imposition of any penalty for violation of the proposed reporting rule in no way undercuts EPA's determination that reporting does not equal regulation for the purposes of the CAA.

Response: See Section II.S and the response to comments for legal issues for discussions on EPA's current position that this final rule does not make GHGs subject to regulation under the CAA.

Commenter Name: Caroline Choi

Commenter Affiliation: Progress Energy

Document Control Number: EPA-HQ-OAR-2008-0508-0439.1

Comment Excerpt Number: 18

Comment: EPA proposes to include in the rules a provision, § 98.8, enumerating the potential CAA violations that could be incurred for failing to comply with the rule and stating that "each day of a violation constitutes a separate violation." It is Progress Energy's position that this provision is unnecessary and, in some cases, unreasonable. EPA does not need a rule to identify its enforcement authority. EPA's enforcement authority derives from CAA § 113, and the types of potential violations are determined by the applicable substantive requirements of the rule and not by a separate "enforcement" provision in the rule. The Company urges EPA to remove this provision.

Response: See the preamble for the response on enforcement. See also the response to EPA-HQ-OAR-2008-0508-0956.1, excerpt 22, on the need to retain §98.8.

Commenter Name: Lauren E. Freeman

Commenter Affiliation: Hunton & Williams LLP

Document Control Number: EPA-HQ-OAR-2008-0508-0493.1

Comment Excerpt Number: 39

Comment: EPA proposes to include in the rules a provision, § 98.8, stating that "[a]ny violation of the requirements of this part shall be a violation of the Clean Air Act." This proposed section then lists the potential "Clean Air Act" violations that could result from failure to comply with the rule and states that "[e]ach day of a violation constitutes a separate violation." As discussed above, UARG disagrees with EPA's assertion that CAA provisions are the source of authority for the proposed rule. But even if they were, and even if authority to enforce this rule were

derived from CAA § 113, the types of potential violations would be determined with reference to the applicable substantive requirements of the rule, and not by some separate “enforcement” provision in the rule such as proposed § 98.8. This provision is inappropriate and should not be included in the final rule.

Response: See the preamble for the response on enforcement. See also the response to EPA-HQ-OAR-2008-0508-0956.1, excerpt 22, on the need to retain §98.8.

Commenter Name: J. Michael Kennedy

Commenter Affiliation: Florida Electric Power Coordinating Group

Document Control Number: EPA-HQ-OAR-2008-0508-0473.1

Comment Excerpt Number: 15

Comment: EPA proposes to include in the rules a provision, § 98.8, enumerating the potential CAA violations that could be incurred for failing to comply with the rule and stating that "each day of a violation constitutes a separate violation." It is the FCG's position that this provision is unnecessary and, in some cases, unreasonable. EPA does not need a rule to identify its enforcement authority. EPA's enforcement authority derives from CAA § 113, and the types of potential violations are determined by the applicable substantive requirements of the rule and not by a separate "enforcement" provision in the rule. The provision should be removed.

Response: See the preamble for the response on enforcement. See also the response to EPA-HQ-OAR-2008-0508-0956.1, excerpt 22, on the need to retain §98.8.

Commenter Name: Jerry Call

Commenter Affiliation: American Foundry Society (AFS)

Document Control Number: EPA-HQ-OAR-2008-0508-0356.2

Comment Excerpt Number: 21

Comment: The proposed regulation provides that a violation of these requirements is treated as a CAA violation, with each day of violation constituting a separate violation. Proposed 40 CFR §98.8. Improperly reporting CO₂ emissions should not be treated the same as violating a condition of an air permit and this language should be revised.

Response: See the preamble section on compliance and enforcement for the response on EPA's approach to enforcement. See also the response to EPA-HQ-OAR-2008-0508-0140, excerpt 2, for additional discussion of the fact that §98.8 does not affect EPA's enforcement flexibility.

Commenter Name: Willie R. Taylor

Commenter Affiliation: U.S. Department of the Interior

Document Control Number: EPA-HQ-OAR-2008-0508-0474.1

Comment Excerpt Number: 14

Comment: In the last paragraph of J.1 on page 16476 it states "In addition, under the authorities of CAA sections 114 and 208, EPA has the authority to independently conduct site visits to observe monitoring procedures, review records, and verify compliance with this rule..." It is not clear whether EPA would have the authority for inspection. Would the inspections be delegated

to MMS? MMS already has a rented fleet of helicopters, and proven inspectors that know platforms operations and processes. EPA would need to consult with MMS to generate a plan that would meet the inspection requirements.

Response: The EPA has authority to conduct inspections for purposes of enforcing the GHG reporting rule and this would not be delegated to the Mineral Management Service for offshore oil platform operations. However EPA often involves experts from outside the EPA in understanding certain source categories, coordinates with other agencies that interact with facilities subject to EPA rules, and welcomes assistance from other Federal and State agencies in implementing the rule.

Commenter Name: Lauren E. Freeman

Commenter Affiliation: Hunton & Williams LLP

Document Control Number: EPA-HQ-OAR-2008-0508-0493.1

Comment Excerpt Number: 14

Comment: EPA suggests in the preamble that it might (1) perform comparisons of data across similar facilities or conduct site visits, 74 Fed. Reg. at 16,477, and (2) conduct “automated checks for data completeness, data quality, and data consistency.” Id. at 16,595. These activities are appropriate, traditional tools for auditing source compliance and UARG has no objection to them as long as no automated checks are used to enforce requirements that do not exist in the rules, and decisions regarding follow-up action are made appropriately. In UARG’s experience under the ARP, some of EPA’s automated checks are not based on rule requirements, but on Agency staff “expectations” regarding what normal data might look like. In no event should such a check result in “feedback” labeling of the data as containing “errors” without first communicating with the source and confirming that the data were in fact erroneous.

Response: See the preamble for the response on compliance and enforcement. Also see the preamble response on the emissions verification approach. The EPA’s flexible compliance approach includes informal actions, such as discussing data anomalies with reporters to better understand the data and determine whether they are actually erroneous.

Table 1

COMMENTS	AFFILIATE	DCN
Michel R. Benoit	Cement Kiln Recycling Coalition (CKRC)	EPA-HQ-OAR-2008-0508-0467
Andrew T. O’Hare	Portland Cement Association (PCA)	EPA-HQ-OAR-2008-0508-0509.1

Table 2

COMMENTS	AFFILIATE	DCN
Bill Grygar	Anadarko Petroleum Corporation	EPA-HQ-OAR-2008-0508-0459.1
Bruce Thompson	American Exploration and Production Council	EPA-HQ-OAR-2008-0508-0367.1

Table 3

COMMENTS	AFFILIATE	DCN
Karin Ritter	American Petroleum Institute (API)	EPA-HQ-OAR-2008-0508-0679.1
James Greenwood	Valero Energy Corporation	EPA-HQ-OAR-2008-0508-0571.1
William W. Grygar II	Anadarko Petroleum Corporation	EPA-HQ-OAR-2008-0508-0459.1

Table 4

COMMENTS	AFFILIATE	DCN
Johnny R. Dreyer	Gas Processors Association (GPA)	EPA-HQ-OAR-2008-0508-0412.1
William W. Grygar II	Anadarko Petroleum Corporation	EPA-HQ-OAR-2008-0508-0459.1

Table 5

COMMENTS	AFFILIATE	DCN
Chris Hobson	The Southern Company	EPA-HQ-OAR-2008-0508-1645.1
Quinlan J. Shea, III	Edison Electric Institute (EEI)	EPA-HQ-OAR-2008-0508-1021.1

Table 6

COMMENTS	AFFILIATE	DCN
Craig Holt Segall	Sierra Club	EPA-HQ-OAR-2008-0508-0635.1
Melissa Thrailkill	Center for Biological Diversity	EPA-HQ-OAR-2008-0508-0430.1

Table 7

COMMENTS	AFFILIATE	DCN
James Greenwood	Valero Energy Corporation	EPA-HQ-OAR-2008-0508-0571.1 EPA-HQ-OAR-2008-0508-0571.2
Charles T. Drevna	National Petrochemical and Refiners Association	EPA-HQ-OAR-2008-0508-0433.1 EPA-HQ-OAR-2008-0508-0433.2